TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 195.

C. P. HUNTINGTON, AS SPECIAL RECEIVER OF THE CENTRAL LAND COMPANY OF WEST VIRGINIA, APPELLANT,

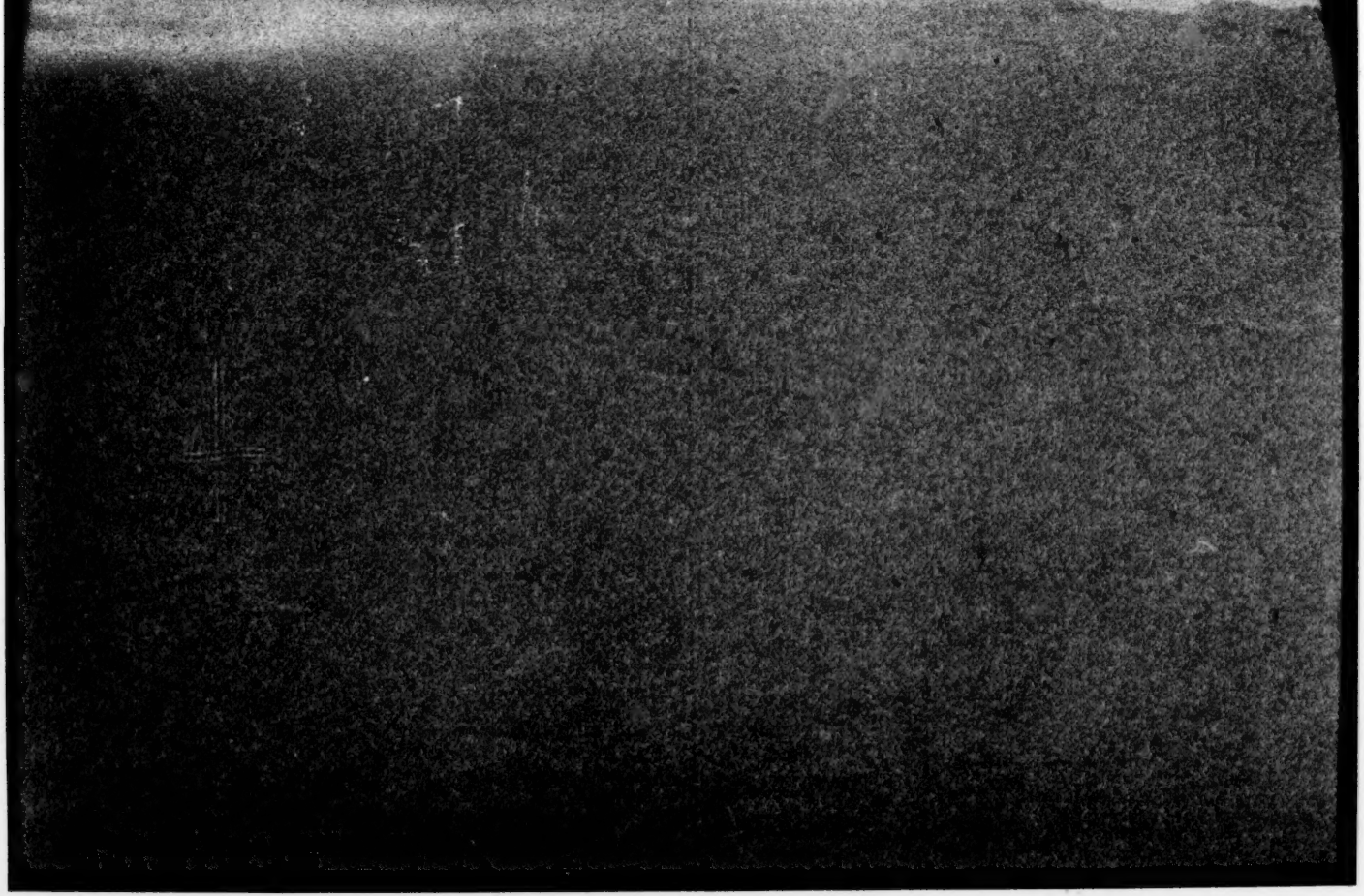
vs.

JOHN H. LAIDLEY, W. S. LAIDLEY, THOMAS J. BRYAN, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED JULY 23, 1906.

(16,934.)



(16,934.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 105.

C. P. HUNTINGTON, AS SPECIAL RECEIVER OF THE CENTRAL LAND COMPANY OF WEST VIRGINIA, APPELLANT,

vs.

JOHN B. LAIDLEY, W. S. LAIDLEY, THOMAS J. BRYAN, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Exhibit A—Deed, Pennybacker to Huntington, Feb. 25, 1870	15	10
J. B. L.—Deed, Pennybacker to Laidley, Jan. 26, 1882	18	12
B—Receiver Central Land Co. *vs.* Laidley	20	13
C—Decree in Huntington *vs.* Central Land Co.	33	23
E—Deed, John B. to W. S. Laidley, August 5, 1889	37	25
F—Subpœna to John B. Laidley *et al*	40	26
Order awarding injunction	41	28
Injunction bond	43	29
Injunction	44	30
Order filing demurrer of J. B. Laidley, &c	46	31
Demurrer of John B. Laidley	47	32
Order submitting cause on demurrer, &c	49	33
Order overruling demurrer of J. B. Laidley	50	34

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 26, 1899.

	Original.	Print.
Order allowing Laidley sixty days to plead or answer	50	34
Answer of John B. Laidley *et al*	51	34
Exhibit No. 1—(Not set out here)	59	41
No. 2—(Not set out here)	60	41
No. 3—(Not set out here)	60	41
No. 4—(Not set out here)	60	41
Order filing answer of John B. Laidley *et al*	60	41
Plea and answer of John B. Laidley *et al.* (not set out)	60	41
Order filing petition of C. P. Huntington, &c	60	41
Petition of C. P. Huntington, special receiver	61	42
Affidavit of George C. Sturgiss	62	43
Amended bill of complaint	63	43
Exhibit A—Deed, Everett to Pennybacker, August 18, 1865	107	71
B—Deed, Pennybacker to Huntington, Feb. 25, 1870	109	72
C—Deed, Laidley to Huntington, April 13, 1870	112	74
D—Deed, Huntington to Central Land Co., October 16, 1871	115	76
E—Decree in Huntington *vs.* Central Land Co	133	87
F—Deed, Pennybacker to Laidley, Jan. 26, 1882	136	89
G—Bill of complaint, Pennybacker *vs.* Pennybacker *et al*	138	90
H—Decree in Pennybacker *vs.* Pennybacker *et al*	141	92
I—Pennybacker to Parsons, February 20, 1874	142	93
K—Bill of complaint, Central Land Co. *vs.* Laidley, &c.	144	94
L—Deed, John B. to W. S. Laidley, August 5, 1889	156	101
M—Bill of complaint, Laidley *vs.* Huntington *et al*	158	102
Subpœna in chancery on amended bill	175	113
Joint and several demurrer of defendants	178	116
Order filing demurrer of W. E and M. E. Chilton	185	121
Demurrer of Wm. E. and Mary E. Chilton	186	121
Order filing demurrer of John B. Laidley *et al*	193	126
Demurrer of John B. Laidley *et al*	194	127
Plea and answer of John B. Laidley *et al*	202	132
Exhibit A 2—Record in Central Land Co. *vs.* Laidley	218	142
Petition of John B. Laidley for writ of error	223	142
Transcript from Cabell county circuit court in Laidley *vs.* Central Land Co	223	142
Declaration	224	143
Notice and proof of service	225	144
Order taking motion to quash under advisement	226	145
Plea of certain defendants	226	145
Order sustaining motion to quash, &c	226	145
Order for survey	226	146
Report of survey	227	146
Surveyor's notice	229	148
Order suggesting death of defendant Durkin	229	149
Order abating suit as to Durkin	229	149
Order making Central Land Co. party defendant, &c	230	149
Declaration	230	150
Notice and proof of service	231	151
Plea, &c	232	151

		Original	Print.
Exhibit A 2—	Order for survey	232	151
	Report of survey	232	152
	Map	233	152
	Order consolidating causes, &c	234	153
	Order calling jury	235	153
	Orders continuing trial	235	154
	Verdict	237	155
	Judgment	237	156
	Bill of exceptions	237	156
	Deed, George N. Brown to Richard and Benjamin Brown, January 17, 1812	238	156
	Will of Benjamin Brown, Sept. 14, 1848	239	158
	Deed, James H. Brown *et al.* to Albert Laidley, December 29, 1848	240	158
	Deed, Albert Laidley *et ux.* to Isaac Frampton, November 6, 1856	242	161
	Will of Isaac Frampton, Sept. 27, 1860	244	162
	Decree of circuit court of Cabell county in McCullough *et al. vs.* Everett *et al*	245	163
	Order of circuit court Cabell county as to destroyed records	246	164
	Deed, Rebecca J. Everett to Sarah H. G. Pennybacker, August 18, 1865	246	164
	Deed, Sarah H. G. Pennybacker to John B. Laidley, January 26, 1882	247	166
	Deed, John M. Pennybacker *et al.* to C. P. Huntington, February 25, 1870	248	167
	Deed, C. P. Huntington to Central Land Co., October 16, 1871	251	169
	Deposition of Hammond Dorsey	262	181
	Harriet O. Meyerly	263	182
	Henry E. Wootten	265	183
	Copy of record from circuit court of Howard county, Md., showing issuance of marriage license to John M. Pennybecker and Sarah H. G. Owings	266	185
	Report of survey (not set out here)	267	186
	Decree of circuit superior court of law and chancery of Augusta county, Va., in case Coleman *et al. vs.* Morgan *et al*	267	186
	Extracts from report of commissioners	272	190
	Deed, David Frampton to W. L. and John L. Johnson, June 23, 1863	272	190
	Exception No. 1	274	192
	Deed, Rebecca Everett *et al.* to Ephraim M. Frampton, April 18, 1863	275	192
	Deed, Ephraim M. Frampton *et al.* to Rebecca Everett, April 18, 1863	276	194
	Deed, Rebecca Everett *et al.* to David Frampton, April 18, 1863	278	195
	Exception No. 2	280	197
	Statement of facts proved by plaintiff	280	197

		Original.	Print.
Exhibit A 2—	Deed, Albert Laidley *et ux.* to C. P. Huntington, April 13, 1870	283	200
	Exception No. 3	285	202
	Deed, John M. Pennybacker *et ux.* to Warren J. Parsons, February 20, 1874	285	202
	Record from circuit court of Cabell county in case of Sarah H. Pennybacker *vs.* John M. Pennybacker *et al.*	286	203
	Bill of complaint	287	204
	Order on bill of complaint	289	206
	Exhibit A—(Not set out here)	289	206
	B—(Not set out here)	289	206
	C—Deed, Noel *et ux.* to Pennybacker, March 3, 1870	289	206
	D—Deed, Pennybacker *et ux.* to Hayslip, July 20, 1871	290	208
	E—Deed, Jacobs *et ux.* to Mitchell *et al.*, August 11, 1870	291	209
	Summons	293	210
	Bond	294	211
	Decree of December 16, 1872	295	212
	Decree of December 19, 1873	295	213
	Order dismissing suit, June 3, 1874	296	213
	Exception No. 4	296	214
	Agreement of John B. Laidley with Mrs. S. H. G. Pennybacker, January 27, 1882	296	214
	Statement of facts proved by defendant	297	214
	Statement of testimony of plaintiff	299	216
	Plaintiff's motion for instructions	299	216
	Exception No. 5	300	217
	Exception No. 6	300	217
	Judge's certificate to exceptions	300	217
	Clerk's certificate to transcript of record	300	217
	Petition of Central Land Company for appeal and supersedeas	300	218
	Order granting appeal and supersedeas	303	221
	Transcript from circuit court of Summers county in case of The Central Land Co. *vs.* Laidley *et al.*	304	221
	Bill of complaint	304	222
	Answer of J. B. Laidley	312	230
	Amended and supplemental bill	315	233
	Answer of J. B. Laidley	322	240
	Demurrer of S. H. G. Pennybacker	327	244
	J. B. Laidley (to both bills)	327	245
	S. H.G. Pennybacker to amended bill	329	247
	Depositions filed by plaintiff	330	247
	Deposition of Mrs. Lena Smith	330	247
	Mrs. S. H.G. Pennybacker	332	250

		Original.	Print.
Exhibit A 2—	(Exceptions thereto)	350	268
	Deposition of Mrs. Mollie Ferguson	351	268
	Ham. Dickey	357	275
	Mrs. Minnie Walstrum	362	280
	Mrs. M. E. Sanders	370	288
	Depositions filed by defendant	380	298
	Deposition of J. B. Laidley	380	298
	A. P. Mitchell	383	300
	F. F. McCullough	383	301
	P. A. Adkins	387	305
	J. M. Noble	389	307
	J. B. Laidley (recalled)	390	308
	J. M. Noble (recalled)	391	308
	P. A. Adkins (recalled)	396	314
	J. D. Wellman	397	315
	F. B. Enslow	398	316
	Tax receipts, &c	400	318
	Deposition of Mrs. Jennie Donnella	404	322
	S. H. G. Pennybacker (recalled)	406	324
	Joseph R. Shelton	408	326
	D. W. Lemins	409	328
	E. S. Buffington	413	331
	Order filing demurrer of Mrs. Sarah H. G. Pennybacker	415	333
	Order removing cause to Summers county	415	333
	Certificate of clerk of Cabell circuit court	415	333
	Order to docket cause in Summers circuit court	415	333
	Order granting leave to file amended bill, &c	416	334
	Order filing demurrer and answer of Laidley, &c	416	334
	Final decree	416	334
	Clerk's certificate to transcript of record	417	335
	Order denying petition of Central Land Co. for writ of error, &c	417	335
	Petition of Central Land Co. for writ of error, &c.	418	336
	Transcript from circuit court of Cabell county in case of Laidley *vs.* Central Land Co. after filing mandate	420	338
	Judgment on mandate	420	338
	Order removing cause to Summers county	421	339
	Order to docket cause in circuit court of Summers county	422	340
	Order continuing cause	422	340
	Order staying proceedings until decision of court of appeals in chancery suit	422	340
	Order for survey and remanding cause to Cabell county	422	340
	Order to docket cause in circuit court of Cabell county	424	342

		Original.	Print.
Exhibit A 2—	Order taking motion for judgment, &c., under advisement	424	342
	Order filing claim for improvements	425	343
	Claim for improvements	425	343
	Order overruling motion for judgment	425	343
	Order filing claim for profits, &c	426	344
	Order calling jury	427	345
	Claim for profits, &c	427	345
	Order for continuance	427	345
	Order discharging jury	427	345
	Order calling jury	428	346
	Verdict	428	346
	Motion to set aside verdict	429	347
	Judgment	429	347
	Bill of exceptions	430	348
	Deed, Rebecca J. Everett to Sarah H. G. Pennybacker, August 18, 1865	430	348
	Deed, Sarah H. G. Pennybacker to John B. Laidley, January 26, 1882	432	350
	Deed, John M. Pennybacker *et ux.* to C. P. Huntington, February 25, 1870	433	351
	Deed, C. P. Huntington to Central Land Co., October 16, 1871	435	353
	Report of Surveyor Thornburg	447	365
	Map of survey	451	368
	Agreement as to judgment after decision of chancery suit	450	369
	Record of chancery suit (not set out here)	452	370
	Mandate of supreme court of appeals in chancery suit	453	370
	Statement of facts proved by plaintiff	453	370
	Deed, James H. Brown *et al.* to Albert Laidley, December 29, 1848	454	371
	Deed, Albert Laidley *et ux.* to C. P. Huntington, April 13, 1870	456	373
	Statement of facts proved by defendant	458	375
	Testimony of H. C. Simms	458	375
	Deed, Albert Laidley *et ux.* to Isaac Frampton, November 6, 1856	459	376
	Will of Isaac Frampton, Sept. 27, 1860	461	378
	Statement of facts proved by plaintiff	462	379
	Decree in McCullough *et al. vs.* Everett *et al*	462	379
	Plat of lands of which Isaac Frampton, Jr., died seized	464	380
	Deed, Rebecca Everett *et al.* to Ephraim M. Frampton, April 18, 1863	463	381
	Deed, Ephraim M. Frampton *et al.* to Rebecca Everett, April 18, 1863	466	382
	Deed, Rebecca Everett *et al.* to David Frampton, April 18, 1863	467	384
	Petition of P. H. McCullough	469	386
	Order on petition of McCullough	470	386

		Original.	Print.
Exhibit A 2—	Deed, Rebecca J. Everett *et al.* to Albert Laidley, June 16, 1870	470	387
	Deed, Rebecca J. Everett *et al.* to P. H. McCullough, November 23, 1872	470	387
	Deed, David Frampton *et ux.* to William L. and J. L. Johnson, June 23, 1863	475	392
	Deed, Ephraim M. Frampton *et ux.* to Albert Laidley, July 22, 1870	476	393
	Statement of facts proved by plaintiff	478	395
	Testimony of T. W. Peyton	478	395
	J. L. Thornburg	479	395
	J. L. Johnson	479	396
	J. L. Thornburg (recalled)	480	396
	I. F. Stewart	480	397
	Motion to strike out overruled	481	397
	Plaintiff's requests for instructions	481	397
	Defendant's requests for instructions	482	399
	Verdict	483	400
	Motion for new trial overruled	484	400
	Judge's certificate to bill of exceptions	484	400
	Clerk's certificate to transcript of record	484	401
	Clerk's certificate to transcript of record	484	401
	Petition of Central Land Co. for writ of error, &c	485	401
	Writ of error	490	407
	Return to writ of error	491	408
	Bond	491	408
	Citation	493	409
	Acceptance of service of citation	493	410
Opinion of Supreme Court of the United States in Central Land Co. *vs.* Laidley		494	410
Exhibit B 2—(Not set out)		504	416
No. 1—(Not set out)		505	416
No. 2—Record in Laidley *vs.* Harvey		505	416
No. 3—Record in Laidley *vs.* Jasper *et al*		511	423
No. 4—Record in Laidley *vs.* Williams		517	428
No. 5—Record in Laidley *vs.* Hall		524	434
No. 6—Record in Laidley *vs.* Remley		529	440
No. 7—Record in Laidley *vs.* Love *et al*		536	446
No. 8—Record in Laidley *vs.* O'Brien		543	453
No. 9—Record in Laidley *vs.* Napier *et al*		550	459
No. 10—Record in Laidley *vs.* Jobe		557	465
No. 11—Record in Laidley *vs.* Greenwell		566	472
No. 12—Record in Laidley *vs.* Kneff		572	478
No. 13—Record in Laidley *vs.* Sands		579	484
No. 14—Record in Laidley *vs.* Peko		585	490
No. 15—Record in Laidley *vs.* Noble *et al*		592	496
No. 16—Record in Laidley *vs.* Mitchell		602	504
No. 17—(Not set out)		609	510
Order filing plea and answer of John B. Laidley *et al*		610	510
Order awarding rule against defendants		611	511
Petition of C. P. Huntington, special receiver		612	512
Order setting cause for hearing at Charleston		614	513

	Original.	Print.
Stipulation of counsel as to hearing	614	513
Order permitting plaintiff to amend amended bill	615	514
Order overruling motion to strike out plea and answer	616	514
Opinion of Judge Goff, U. S. circuit court	617	515
Order filing notice of motion to dissolve injunction	621	517
Notice of John B. Laidley to dissolve injunction	622	518
Copy of order for service and return	622	518
Notice of C. P. Huntington, special receiver	624	519
Order overruling plea of *res adjudicata* and leave to answer	624	519
Order overruling defendants' motion to dissolve injunction	625	520
Order overruling defendants' motion to appoint receiver	625	520
Order filing plea and answer of J. B. Laidley	626	520
Plea and answer of John B. Laidley	626	521
Order overruling motion to dissolve injunction	644	530
Order directing assessment of property to receiver	645	531
Order suggesting death of R. T. Harvey and abating suit	646	532
Exhibit "Execution for Costs"	647	532
Order extending time for filing defendants' plea or answers	649	534
Order awarding rule against J. B. Laidley *et al.* and petition	650	534
Answer of defendants T. J. Bryan *et al.*	652	536
Exhibit T T—Mandate of Supreme Court of the United States	669	547
V V—Proceedings on madate	670	548
General replication of plaintiff to answer	671	550
Order filing petition and awarding rule, etc	672	550
Petition of C. P. Huntington, special receiver	673	550
Exhibit Advertisement, Laidley *vs.* Jackson	677	553
Laidley *vs.* Remley	677	554
Laidley *vs.* Curry *et al.*	677	555
Laidley *vs.* Kneff	677	555
Laidley *vs.* Williams	678	556
Laidley *vs.* Greenwell	678	557
Laidley *vs.* Harvey	678	557
Laidley *vs.* Noble *et al.*	678	558
Laidley *vs.* O'Brien	679	559
Laidley *vs.* Mitchell	679	559
Laidley *vs.* Peko	679	560
Laidley *vs.* Hall	679	561
Laidley *vs.* Love *et al.*	680	561
Laidley *vs.* Jobe *et al.*	680	562
Rule *vs.* Z. T. Vinson *et al.* (not set out)	680	562
Order filing answer of W. R. Thompson to rule	681	563
Answer of W. R. Thompson to rule	681	563
Exhibit—Record in Laidley *vs.* Remley	684	565
Record in Laidley *vs.* Remley	690	572
Answer of John B. Laidley to rule	694	574
Exhibit A—(Not set out)	701	578
B—(Not set out)	701	578
Order continuing rules	701	579
Order extending time to take depositions	702	579
Petition of C. P. Huntington, special receiver	702	580
Order discharging rule for contempt	705	582
Record in Central Land Company of West Va. *vs.* John B. Laidley	705	582

	Original.	Print.
Bill of complaint	705	582
Exhibit A—Deed, Everett to Pennybacker, August 18, 1865.	714	588
B—Deed, Pennybacker to Huntington, February 25, 1870	716	589
C—Deed, Huntington to Central Land Co., October 16, 1871	719	591
D—Deed, Pennybacker to Laidley, Jan. 26, 1882	737	603
E and F—Proceedings on mandate	739	604
Subpœna in chancery	761	621
Order awarding temporary injunction	763	622
Injunction	763	622
Stipulation by counsel as to injunction	765	623
Bond of C. P. Huntington, special receiver	766	624
Demurrer of John B. Laidley	769	627
Order continuing injunction in force	774	630
Plea and answer of John B. Laidley	775	631
Order filing plea and answer of John B. Laidley	780	634
Order limiting time for filing exceptions to sixty days	780	634
Order extending time for filing exceptions or replevin	780	634
Order setting cause for hearing at Charleston	781	635
Final decree in favor of defendants	782	635
Record in C. P. Huntington *et al. vs.* The Central Land Co. of W. Va.	784	636
Bill of complaint	784	636
Subpœna in chancery	785	637
Order appointing temporary receiver	786	638
Injunction	787	639
Order appointing C. P. Huntington permanent receiver	788	640
Report of F. B. Enslow, special receiver	791	642
Order filing bond of C. P. Huntington, receiver, etc	792	643
Order filing petition of John B. Laidley, etc	794	644
Petition of John B. Laidley	794	644
Order served with copy of petition of John B. Laidley	797	646
Order overruling motion to remove receiver	798	647
Order filing petition of J. B. Laidley, &c	798	647
Final decree from which appeal is taken	799	647
Order staying proceedings	800	649
Appeal and allowance	801	649
Petition for appeal	802	650
Assignment of errors	803	651
Certificate of court as to question of jurisdiction	804	652
Appeal bond	806	652
Citation and service	808	654
Clerk's certificate	812	656

1 Be it remembered that heretofore, to wit, at a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in said district, on the 28th day of February, 1891, came C. P. Huntington, special receiver of the Central Land Company of West Virginia, by counsel, and filed his bill of complaint against John B. Laidley *et al.;* which said bill of complaint is in the words and figures following, to wit:

Bill.

To the honorable the circuit court of the United States for the district of West Virginia:

Humbly complaining, showeth unto your honor your orator, C. P. Huntington, special receiver of the Central Land Company of West Virginia:

That on the 25th day of February, 1870, he, C. P. Huntington, in his individual capacity, bought of Jno. M. Pennybacker and Sarah H. G. Pennybacker a tract of land in what is now the city of Huntington, known as lot number four (4) of the Frampton land, containing two hundred and forty (240) acres, subject to a reservation of one acre, for which the said Jno. M. Pennybacker and Sarah H. G. Pennybacker executed their deed conveying the same to him, as will appear from a certified copy of said deed filed with this bill and marked "Exhibit A."

That under such said deed he took actual possession of said land, and afterwards, by deed of special warranty, sold and conveyed the same to the Central Land Company of West Virginia, along with a large amount of other land, which the said company then took actual possession of and laid off into streets, alleys, and lots, and founded the city of Huntington, and kept and held possession of same (except the lots sold as hereinafter set out) until the transfer of the said company's property to him as special receiver, as hereinafter set out.

2 That after the said Central Land Company laid off the said land into town lots they sold various tracts and parcels of said land to different persons, who built houses upon the same; that there were twenty-one (21) lots sold on said tract, and that the said twenty-one (21) lots are as follows and are held by the following parties who bought the same, as your orator is informed, without notice of any claim of the said Jno. B. Laidley, and who are innocent purchasers (no lots being sold out of said tract after said Laidley made claim thereto), viz:

R. T. Harvey,	lot 4,	block 67.
Jackson & Jas. Jasper,	" 5,	" 68.
A. L. Williams,	" 14,	" 68.
S. R. Hall,	" 13,	" 68.
C. S. & S. A. Remley,	" 12,	" 68.
S. J. Love & I. Myers,	" 8 & 9,	" 67.
Michael O'Brien,	" 4,	" 68.

J. L. M. Curry,	lot 18,	block 67.
Heirs of L. F. Jobe,	" 11,	" 68.
Clay Greenwell,	" 10,	" 68.
Catherine Kneff,	" 8 & 9,	" 68.
Margaret Sands,	" 7,	" 68.
Chas. Rose,	" 6,	" 68.
Heirs of E. T. Mitchell,	" 13 & 14,	" 67.
Wm. Duster,	" 11,	" 67.
Heirs of J. M. Noble,	" 10,	" 67.
" " "	" 15,	" 67.
" " "	" 16,	" 67.

That the said Shelby J. Love, Jackson Jasper, J. M. Noble, as to lots 15 and 16 of block 67; Margaret Sands, Michael
3 O'Brien, Susan A. Remley, and Catherine A. Kneff hold by general warranty deeds direct from the Central Land Company, and the others through conveyances from intermediate holders hold their lots by title derived from the Central Land Company; but whether they hold by complete chains of warranty deeds or not your orator does not know.

During the time said lots and pieces of land were being sold, and the said purchasers were building houses and residences thereon, and the C. & O. railway was being built upon said tract, the said Sarah H. G. Pennybacker was living in said city, or in immediate vicinity, and had notice and knew that the parties were so buying and building upon said tract and believing themselves to be the owners in fee-simple of the lots so purchased.

In the winter of 1881, after the death of John M. Pennybacker, the husband of Sarah, John B. Laidley, a practicing attorney in the courts of West Virginia, voluntarily went to said Sarah and told her, as she claims, that under the new constitution of West Virginia she had dower in the tract of land she had sold to C. P. Huntington, and that if she would allow him to bring a suit he would recover it for her, and they would divide equally what was recovered. At the time he approached and told her that she had an interest still in the land, he made her promise him "on the honor of a lady" that she would not consult any other lawyer about the matter. She then and there told said Laidley that she had sold the said tract of land to the said Huntington, and had received the pay for it, and she could not understand how she had any further interest of any kind in the land. She refused to allow the said Laidley to bring any suit in her name to recover dower or any other interest. After repeated efforts to have her bring suit, and failing, and still insisting that she had a dower, he offered to give her $500 if she would deed the land to him. The said Sarah had no business experience, having before that time relied entirely upon her husband, who was then dead, and being obligated by the said Laidley not to consult any lawyer, and without consulting any lawyer as to the effect of her acts, on the 26th day of January, 1882, she executed and delivered to said Laidley a deed for said
4 tract for the sum of $500, $100 of which he paid in cash, and gave his notes for the balance, payable in one and two years.

That after procuring said deed of January 26th, 1882, a certified copy of which is filed with this bill as a part of it, marked "Exhibit J. B. L.," said J. B. Laidley undertook to set up and claim title to said tract of land, made a number of sales of parts of said land to various persons, hereinafter set out, and sought to dispossess the said The Central Land Company and those claiming under it; that said claim and setting up of *of* said Laidley's pretended title so obtained and the sales made by him to a large number of persons caused and made such a cloud on the title of the said land company and those claiming under it that said land company has not from that time been able to make any sales of any of said land, and your orator, as special receiver of your honor's court, as hereinafter set out, has been vested with all the rights of the said land company, but has not been able to make any sales of the same for the reason that said Laidley's claim prevents purchasers from buying said land by reason of the fact of said cloud being on the title.

Your orator further alleges and charges that the said J. B. Laidley is insolvent, as he is informed and believes; that he is threatening to take possession of the whole of said tract of land, including the lots sold as aforesaid, and is seeking to compel the said lot-owners to pay him for the said lots bought of the said land company, and if he is allowed to take possession of the said land and of the lots sold it will cause your orator, who is in possession, to lose the same and cause him and the owners of the said lots of land irreparable loss and injury.

Your orator further represents that afterwards the said Central Land Company sued out and obtained from the circuit court of the United States for the district of West Virginia an injunction against the said Laidley preventing him from interfering with its possession of said land, all of which will fully and at large appear from a certified copy of the said bill, exhibits, and decree awarding said injunction in said chancery suit of the Central Land Company of West Virginia against Jno. B. Laidley, now pending in the said circuit court of the United States, filed herewith as a part of this bill and marked "Exhibit B."

That on the 16th day of December, 1890, in the chancery suit of I. E. Gates *et al. and others* against The Central Land Company, defendant, then pending in the United States circuit court for the district of West Virginia, your orator was appointed special receiver of the Central Land Company to take possession of the property of the Central Land Company of West Virginia, and as such receiver was directed specially to take possession of the two-hundred-and-forty (240) acre tract of land in controversy between the Central Land Company and Jno. B. Laidley and to hold the same as receiver of said circuit court of the United States, as will appear from a copy of the decree in the said suit of I. E. Gates *et al.* against the said Central Land Company, herewith filed and marked "Exhibit C" and prayed to be read as a part of this bill.

That, acting under such order, your orator gave bond as such receiver in the penalty of two hundred thousand ($200,000) dollars

and took actual possession of said tract of two hundred and forty (240) acres of land on the said 16th day of December, 1890, and that at the time your said special receiver took possession of the said tract he permitted and left the said lots (sold out of the two-hundred-and-forty (240) acre tract) in the possession of the said several parties who then owned the same, without taking actual possession from them, allowing them to hold the same under him as receiver, their possession being under him.

That under and by virtue of the injunction issued in the chancery suit of the said Central Land Company *vs.* Jno. B. Laidley, as hereinbefore set out, the said Laidley was enjoined and prohibited from interfering in any manner with the possession of the said two-hundred-and-forty (240) acre tract of land or any part of the same.

That under and by virtue of the order appointing your orator special receiver and his taking possession of the said tract of two hundred and forty (240) acres of land, of which the lots sold are a part, he is entitled to hold the same, as an officer of the circuit court of the United States for the district of West Virginia, until the right to the land and the entire question of title is determined.

That the said Jno. B. Laidley, not being a party to the suit
6 in which your orator was appointed receiver, has had no official notice of the fact that the whole tract of land is in possession of your orator, but has been informed of the fact, but not regarding the said injunction order in the case of the Central Land Company against Jno. B. Laidley in this court, which he claims does not apply to the lots sold, and not regarding the fact of your orator's possession as receiver of the two-hundred-and-forty (240) acre tract, less the one acre reserved (now owned by M. E. Roffe), he, the said Jno. B. Laidley, is now proceeding to set up a pretended claim against the several respective lot-owners who own and claim under and by virtue of the sales to them and their vendors by the Central Land Company, and threatens to dispossess them from their said several lots, and denying the right of your orator as special receiver under the decree of this court of December 16th, 1890, as aforesaid, claims he has the right to the possession of said lots, and that your orator, as special receiver, has not the right of possession of the same.

Your orator further says that the claim of Jno. B. Laidley is based upon the fact, as hereinbefore stated, that the deed of February 25th, 1870, from Sarah H. G. Pennybacker and her husband to C. P. Huntington, filed with this bill, for the said tract of land conveyed no title to the said Huntington, because of an alleged defect in its acknowledgment, and no other cause, and that the said Huntington's deed to the Central Land Company, for that reason alone, conveyed no title to the said company, and that he, the said Jno. B. Laidley, claims direct from the said Sarah H. G. Pennybacker, who, after the death of her husband, attempted to convey the said property to him, the said Jno. B. Laidley, which she had in the lifetime of her husband already conveyed by deed, as aforesaid, to C. P. Huntington.

Your orator further represents that said Jno. B. Laidley, in all his

negotiations, acts, and doings, leading up to the purchase of said land and obtaining the conveyance of the same from the said Sarah H. G. Pennybacker, was endeavoring and planning to defraud the said land company and divest it of its property and of the possession thereof, and was conspiring and seeking to make the
7 said Mrs. Pennybacker his passive agent to accomplish such result, and that when he persuaded her to sell and convey to him a property worth many thousand dollars for the sum of five hundred dollars it was an admission or confession on his part that he was making said purchase and procuring said title for a fraudulent purpose, and, in fact, induced the said Mrs. Pennybacker to sell and convey to him said land by false and fraudulent statements and with a fraudulent purpose in view.

Your orator now further says that the said parties hereinbefore set out who own said lots hold the same by virtue of deeds from the Central Land Company to them and their vendors, they claiming (as he is informed, as innocent purchasers) under, by, and through the Central Land Company, which claims under, by, and through the deed from Sarah H. G. Pennybacker and husband to the said C. P. Huntington, and that their title is a legal and valid title; that at the date of February 25th, 1870, when C. P. Huntington bought the said land of the said Sarah H. G. Pennybacker and husband, the said deed of February 25th, 1870, was, as the law was then construed, recognized, settled, and laid down in the State of West Virginia, as declared by the constitution of West Virginia then in effect, a legal, valid, and sufficient deed to convey the said title to the said C. P. Huntington, and that it did convey a fee-simple title to him, the said C. P. Huntington, and was and is a valid, binding, and existing contract between the said C. P. Huntington and the said S. H. G. Pennybacker, and the deed from C. P. Huntington to the Central Land Company, his vendee, passed the title to the said land of which the twenty-one (21) lots sold are a part to the said Central Land Company, and vested the contract rights that the said C. P. Huntington had under said deed in the said Central Lande Company and those claiming under it as vendees.

Your orator further says that he is informed and believes, and now so alleges and charges, that at the date of the conveyance to him by Sarah H. G. Pennybacker and husband, February 25th, 1870, the statute of West Virginia, under which the said S. H. G. Pennybacker, a married woman, conveyed her said land to C. P. Huntington, was in effect the same as the statute of Virginia,
8 and such statute had before that *that*, in various suits in the State of Virginia, been construed by the highest courts in the State and acknowledgments similar to the one in this case held valid and the deed a valid conveyance, and that such construction of said statute became and was a part of the law of West Virginia, and that up to that time no change had been made by any construction of said statute by the courts of West Virginia; that by section one of article nine and section eight of article eleven of the constitution of West Virginia of 1861, the laws of Virginia then in force in what is now West Virginia were the laws of West Virginia

until altered or repealed by the legislature of West Virginia, and under section one of article thirteen of the West Virginia constitution of 1872, which provides that "all private rights and interests in lands in this State derived from or under the laws of the State of Virginia and from or under the constitution and laws of this State prior to the time this constitution goes into operation, shall remain valid and secure and shall be determined by the laws in force in Virginia prior to the formation of this State and by the constitution and laws in force in this State prior to the time this constitution goes into effect," your orator, the said Central Land Company, and the owners of the respective lots were and are entitled to have their rights under the Pennybacker deed of February 25th, 1870, construed according to the laws of West Virginia as they then were and had been construed, and to hold the land that they severally and respectively claim free and clear of any claims of said Jno. B. Laidley growing out of his deed from S. H. G. Pennybacker, which your orator is informed he took with full knowledge of the facts attending your orator's purchase in 1870; but not regarding the facts, the said Jno. B. Laidley and those claiming under him, for the purpose of asserting his title and right to the possession of said land and lots, claim and set up a different construction of the statute under which the deed of S. H. G. Pennybacker was taken, and thereby by such claims would impair the rights of the said purchasers, vested in them by said deed, and raises a cloud on their said title.

Your orator further says that by said deed of February 25th, 1870, and the intermediate conveyances, the said owners of lots hereinbefore set out became vested, under the law as it then
9 stood, with the title to said lots, which could not be divested by a legislative enactment or by a subsequent decision of the court changing the settled rule of construction of the statute. But that since said deed of February 25th, 1870, was executed and possession delivered to your orator as the owner and purchaser of said tract of 240 acres of land the supreme court of West Virginia, without any legislative enactment, has, by various decisions, changed said settled rules of construction as to the validity of the acknowledgments of deeds of married women in West Virginia, so that deeds with acknowledgments similar to those that had been and were heretofore, as the law was construed, held valid and legal conveyances are now held as invalid and void, thereby changing and impairing vested rights of property and impairing the obligations of contracts; that until said decisions of the supreme court of West Virginia were rendered changing the settled rules of construction of the statute regarding acknowledgments of married women and their conveyances the deed of February 25th, 1870, was held as unquestionably good, but since said decision a cloud has been cast upon your orator's title and possession and upon the title of those claiming under, by, and through said Central Land Company of West Virginia, and said J. B. Laidley is setting up and pretending that said deed of Sarah H. G. Pennybacker of the 25th of Feb-

ruary, 1870, is now void by reason of said decision rendered since the date of said deed and rights of property acquired thereunder.

But your orator alleges that under and by virtue of the Constitution of the United States, article 10, section 1, no law or enactment can be passed invalidating the obligation of a contract, and that decisions of a court changing the settled rule of statutory construction cannot invalidate or divest the rights of your orator, The Central Land Company, and those claiming under them, and that such decisions of the supreme court of West Virginia do not and cannot in any way affect or impair the vested rights of this plaintiff, The Central Land Company, or its vendees.

Your orator is advised that if the deed from Sarah H. G. Pennybacker and husband and the title to the said Central Land Company is held good that the said land company will not be liable on any warranty in said deeds to said lot-owners, but if said
10 John B. Laidley is allowed to take possession of said lot, as he threatens and is seeking to do, your orator, as receiver, will be compelled to defend some twenty-one different suits on the covenant of warranty, whereas, if his said threatened proceedings are stayed until the question of title is settled, a multiplicity of suits will thus be avoided.

Your orator further states that the said John B. Laidley, since his purchase of the land of Mrs. Pennybacker, has sold and by deeds conveyed part of said land, *on* an interest therein, to C. W. Campbell, J. E. Erwin, and others, whose titles and holdings are to your orator unknown; that on August 5th, 1889, said John B. Laidley conveyed an undivided three-fourths of his interest in his said tract of land to W. S. Laidley, upon trust set out in said deed, as will fully and at large appear from a certified copy of said deed duly recorded and filed herewith as "Exhibit E."

Your orator further states that Vestor Laidley, the widow of Albert Laidley, claims that she is entitled to dower in said tract, on the ground that said Albert Laidley, in his lifetime, had an interest in said tract of land which he conveyed to the land company and in which she never released her dower, and that said Vester Laidley has now pending in the circuit court of Cabell county a chancery suit to enforce her claim, as will appear from a duly certified copy of said bill herewith filed as part hereof, marked "Exhibit F."

Your orator further says that the said injunction proceedings now pending in the United States circuit court for the district of West Virginia against the said John B. Laidley, the said receivership proceedings, the trust deed to W. F. Laidley, and Vester Laidley's claim for dower creates and causes so much uncertainty in regard to the title to said property that the same, if sold by the said John B. Laidley or his agents, will not bring anything like its fair value, and that the said sales, if made, and possession taken by said Laidley and those claiming under him, will cause great and irreparable loss and damage to the owners of the said several lots, and cause them to lose their entire property therein, and that the said Central Land Company of West Virginia, under and by vir-
11 tue of the deeds heretofore made by them conveying the said several lots to the said several parties, may be compelled by

separate suits in each case upon the warranty made to the purchaser of said lots to pay the amount of damages obtained by the purchasers of the said several lots, and even if the injunction awarded against the said John B. Laidley be made perpetual and the deed and title under which the Central Land Company hold the said land be adjudged valid, and then the said Central Land Company or your orator, as receiver, would be compelled to defend the twenty-one several suits in order to set up his defense and prevent the said parties from recovering against him or the said company the amount of damages sustained by them by reason of the loss of their said property, and if said injunction proceedings should be dismissed and the title of said John B. Laidley should be declared and held good and valid by your honor's court, then your orator would still be compelled to defend the suits brought in order to avoid paying the damages that would be claimed by the said parties for the loss of their property, whereas if the said sales were stayed and further assertion of Laidley's claim prevented until the question of title is definitely ascertained, there would be no necessity for suits, because the amounts to be paid would then be fixed and determined, and your orator, as receiver of this the circuit court of the United States for the district of West Virginia, could thus, by order of the court, be directed to pay said sums to such parties as held under warranty deed, and th-s avoid the costs and multiplicity of suits; that to avoid such multiplicity of suits and costs your orator is entitled to have the said Jno. B. Laidley prevented from enforcing his pretended claim of title to the said lots and land until the final determination of the question of title thereto.

Your orator is informed and believes that it is the intention of the defendant Laidley and those claiming under him in some way to obtain possession of the said land and lots on the second day of March, 1891, or a part thereof, as set out hereinbefore, and which is not embraced in the bill heretofore filed by the Central Land Company against the defendant John B. Laidley, unless he
12 is prevented in so doing, whereby your orator would suffer irreparable injury and loss from delay.

Your orator further states that he is a citizen and resident of the State of New York; that the defendants John B. Laidley, W. S. Laidley, C. W. Campbell, William Duster, R. T. Harvey, Jackson Jasper, James Jasper, A. L. Williams, S. R. Hall, C. F. Remley, S. A. Remley, S. J. Love, I. Myers, Michael O'Brien, Clay Greenwell, Catherine Kneff, Margaret Sands, and Charles Rose are citizens and residents of the State of West Virginia; that J. L. M. Curry is a citizen and resident of the State of Virginia. The residence of the heirs of J. M. Noble is unknown. The residence of the heirs of L. F. Jobe, deceased, is unknown to him, but he is informed that they reside in West Virginia; that J. E. Erwin is a citizen and resident of the State of Tennessee; that the residence of the heirs of E. T. Mitchell is unknown; that Vester Laidley is a citizen and resident of the State of California.

In consideration of all which, and as your orator is remediless save in a court of equity, where matters of this kind are alone and

properly cognizable, he prays that the said John B. Laidley, W. S. Laidley, C. W. Campbell, Vester Laidley, J. E. Erwin, R. T. Harvey, Jackson Jasper, James Jasper, A. L. Williams, S. R. Hall, Wil-iam Duster, C. F. Remley, S. A. Remley, S. J. Love, I. Myers, Michael O'Brien, J. L. M. Curry, the unknown heirs of L. F. Jobe, deceased; Clay Greenwell, Catherine Kneff, Margaret Sands, Charles Rose, the unknown heirs of E. T. Mitchell, deceased, and the unknown heirs of J. M. Noble, deceased, be made parties to this bill and required to answer the same, and that to that end all proper summons, proceedings, &c., do issue.

And he further prays — the said J. B. Laidley, C. W. Campbell, J. E. Erwin, and W. S. Laidley, and all others claiming under him, the said John B. Laidley, and each of them, be enjoined and inhibited from any interference whatsoever with the possession of the said special receiver of the said two hundred and forty acre tract of land (less the one acre) or any part thereof, and from doing any act which will tend to cast a cloud upon the title of the said Central Land Company, by reason of which your orator's possession and title may be in any manner affected, and that they, the said
13 John B. Laidley, C. W. Campbell, J. E. Erwin, W. S. Laidley, and each of them, their agents, attorneys, and servants, may be enjoined from proceeding to enforce any claim against said several lots so sold by said Central Land Company out of said two hundred and forty acre tract, as aforesaid, and from proceeding to take possession of the said several lots, and from making any sales of said several lots or any of them until the question touching the validity of title to said land can be finally settled and adjudicated and the amounts, if any, which your orator, as receiver of the said Central Land Company, may be required to pay as damages for breach of warranty to the said several lot-owners be ascertained, and until it is also ascertained to whom such amounts are payable and in what proportions.

He also further prays that the said deed from S. H. G. Pennybacker to John B. Laidley, dated January 26th, 1882, may be declared fraudulent, null, and void, and the same vacated and annulled, and the cloud upon the title of the said Central Land Company to said land, caused by said deed, removed, and that the deeds from J. B. Laidley to J. E. Erwin, C. W. Campbell, and W. S. Laidley be set aside and declared of no effect; that the title of the said Central Land Company to said tract of 240 acre-, now vested in your orator, be quieted, confirmed, and held valid, and that all such other, further, and general relief be granted him as the case may require and to equity seem fit, and that to that end all proper orders and decrees may be made and entered and references directed, and he will ever pray, etc.

C. P. HUNTINGTON,
Special Receiver,
By COUNSEL.

SIMMS & ENSLOW.
JACKSON & YEATON.

STATE OF WEST VIRGINIA, *County of Wood,* } *To wit:*

B. W. Foster, general agent for C. P. Huntington, special receiver of the Central Land Company of West Virginia, plaintiff in the foregoing bill, being duly sworn, says that the facts and al-
14 legations in the said bill contained were stated upon the knowledge of the receiver, are known to the affiant to be true, and that where they are stated on information of the receiver he, the affiant, believes them to be true, and that he verily believes that all the facts stated in the said bill are true.

B. W. FOSTER.

Taken, sworn to, and subscribed before me, the undersigned, notary public in and for the county of Wood, this the 28th day of February, 1891.

MEYER NEWBERGER,
[SEAL.] *Notary Public, Wood County, W. Va.*

JACKSON & YEATON,
SIMMS & ENSLOW, *Sols.*

15 EXHIBIT "A."

Filed Feb'y 28, 1891.

Know all men by these presents: That we, John M. Pennybacker and Sarah H. G. Pennybacker, of the county of Cabell and State of West Virginia, parties of the first part, and C. P. Huntington, of the city, county and State of New York, of the second part, witnesseth: That the parties of the first part, in consideration of eleven thousand dollars, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey to the said C. P. Huntington, his heirs and assigns forever, all that certain tract or parcel of land situate, lying and being in the county of Cabell and State of West Virginia, on the Ohio river, about three miles below the mouth of the Guyandotte river, and bounded as follows, to wit: "Beginning at a stake, corner of lot No. 3 in the division of the lands of Isaac Frampton, on the Ohio river, S., 19¼° E., 377 poles to a stake; from which a small sycamore stands S., 1½ east, two poles and three links; N., 70¾ east, one pole and 24 links to a stake; from which the above sycamore bears N., 33° W., three poles and 7 links, and another bears 32½ E. 3 poles and 6 links; thence S., 13° E., 120 poles to two white oaks; S., 30 W., 36 poles to a white oak among some rocks on a point; S., 70 W., 50 poles to a black oak and a white oak on a point; S., 11½ W., 120 poles to two white oaks on a hill; S., 54 E., 62 poles to two black oaks; N., 40° E., 150 poles to a chestnut oak near the top of a ridge; N., 5 W., 180 poles to a white oak and two beeches; N., 21 W., 8 poles to the S. E. corner of the Brown tract; thence N., 19 W., 398 poles to a stake on Ohio river; S., 73 W., 47 poles and 14 links to the place of beginning; containing 240 acres, more or less; subject, however, to a reservation of one acre of land at the

corner of the field where the lane and the turnpike road intersect, and whereon a grocery store house stands. Beginning at a stake on the side of the turnpike road and the west side of Beuhring's lane on my line, thence with the turnpike, two hundred and
16 ten feet to a stake; thence S., 19 E., 210 feet to a stake; thence east, and parallel with turnpike, 210 feet to a stake in my line; thence with said line N., 19° W., 210 feet to the beginning. The title of which land is hereby retained and reserved to S. H. G. Pennybacker as if this deed was never made. Also, the right to occupy the land for the present year, work the same and apply the crop for his own use; but to allow said Huntington to work on the same for any purpose in building and completing the Chesapeake and Ohio R. road and its appurtenances. And all the estate, title and interest of the said John M. Pennybacker and Sarah H. G. Pennybacker either in law or equity of, in and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof, to have and to hold the same to the only proper use of the said C. P. Huntington, his heirs and assigns forever. And the said John M. Pennybacker and Sarah H. G. Pennybacker, for themselves and for their heirs, executors and administrators, do hereby covenant with the said C. P. Huntington, his heirs and assigns, that they are the true and lawful owners of the said premises, and have full power to convey the same; that the title so conveyed is clear, free and unencumbered; and further, that they will generally warrant and defend the same against all claim or claims of all persons whomsoever.

In witness whereof, the said John M. Pennybacker and Sarah H. G. Pennybacker have hereunto set their hands and seals this 25th day of February, in the year of our Lord one thousand eight hundred and seventy.

JOHN M. PENNYBACKER. [SEAL.]
S. H. PENNYBACKER. [SEAL.]

Signed, executed and acknowledged in presence of us.

____ ____.
____ ____.

[U. S. revenue stamp, eleven dollars ($11.00).]

GUYANDOTTE TOWNSHIP,
17 *The State of West Virginia, County of Cabell,* } *ss:*

Be it remembered that on the 25th day of February, in the year of our Lord one thousand eight hundred and seventy, before me personally came John M. Pennybacker, party and granter in the foregoing deed, and acknowledged the signing thereof to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my seal on the day and year aforesaid.

THOS. J. HAYSLIP, *Recorder.* [SEAL.]

STATE OF WEST VIRGINIA, }
County of Cabell. }

Personally came before me, the undersigned, recorder of the county and State aforesaid, Sarah H. G. Pennybacker, wife of the above-mentioned John Pennybacker and party to the foregoing deed, and, being examined by me privily, and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Sarah H. G. Pennybacker, acknowledged that she had willingly signed, sealed and delivered the same and wished not to retract it.

Given under my hand and seal this 25th day of February, 1870.

THO. J. HAYSLIP, *Recorder.* [SEAL.]

RECORDER'S OFFICE, }
Cabell County, West Virginia, } *ss:*

This deed, from J. M. Pennybacker and wife to C. P. Huntington, was this day presented to me, the recorder of the county and State as aforesaid, together with the certificates of acknowledgment thereon endorsed. The same is admitted to record.

Given under my hand this 31st day of March, 1870.

THO. J. HAYSLIP, *Recorder,*
By THOS. J. F. HAYSLIP, *Dept.*

A copy from the record.
Attest: F. F. McCULLOUGH, *Clerk C. C. C.*

Fee $1.25.

18 EXHIBIT "J. B. L."

(Filed March 3, 1891.)

This deed, made this 26th day of Jan'y, 1882, between Sarah H. G. Pennybacker, of the first part, and John B. Laidley, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of five hundred dollars, the receipt whereof is hereby acknowledged, does grant unto the party of the second part, and doth bargain, sell, and convey unto him all that certain tract of land situate in the city of Huntington, county of Cabell, and State of West Virginia, containing 240 acres, known as lot No. 4, in the partition of the estate of Isaac Frampton, Jr., deceased, and conveyed to the said Sarah H. G. Pennybacker by Rebecca J. Everett by deed bearing date the 18th day of August, A. D. 1865, and recorded in the county court clerk's office of Cabell county, Deed Book (A), page 236; for further description reference is made to said deed. Reserving one acre, including the brick house on Fifth avenue. And the said party of the first part does hereby covenant with the party of the second part that she will warrant generally the property hereby conveyed.

Witness the following signature and seal:

S. H. G. PENNYBACKER. [SEAL.]

STATE OF WEST VIRGINIA, } *ss:*
Cabell County, }

I, F. F. McCullough, a notary public in and for the county aforesaid, do certify that S. H. Pennybacker, whose name is signed to the writing above, bearing date on the 26th day of January, 1882, has this day acknowledged the same before me in my said county.

Given under my hand this 26th day of January, 1882.

F. F. McCULLOUGH,
Notary Public, Cabell Co., W. Va.

19 STATE OF WEST VIRGINIA:

In the clerk's office of the county court of Cabell county, in the State aforesaid.

This deed from S. H. G. Pennybacker to John B. Laidley, bearing date the 26th day of January, 1882, was this day presented to me, the clerk of the county court aforesaid, and the same, together with the certificate of acknowledgment thereon endorsed, is admitted to record in my office aforesaid.

Given under my hand this 26th day of January, 1882, at 9 o'clock and 30 minutes p. m.

M. S. THORNBURG,
Clerk Cabell County Court.

STATE OF WEST VIRGINIA:

Cabell county court clerk's office.

A true copy of the foregoing deed as appears from the records of said office.

Given under my hand and official seal this 2d day of March, 1891.

F. F. McCULLOUGH,
[COURT SEAL.] *Clerk of Cabell County Court.*

Fee, 75c.

20 EXHIBIT B.

(Filed Feb'y 28th, 1891.)

The bill of complaint of the Central Land Company of West Virginia, filed in the circuit court of the United States for West Virginia, against John B. Laidley, defendant.

Your petitioner, The Central Land Company of West Virginia, a corporation existing under and by virtue of the statutes of West Virginia, complaining, says: That on the 18th day of August, 1865, Sarah H. G. Pennybacker, the wife of John M. Pennybacker, purchased of Rebecca J. Everett a tract of land lying in the county of Cabell and State of West Virginia, containing ten hundred and forty acres, and known as lot No. 4 in the partition of the estate of Isaac Frampton, Jr., deceased, for the sum of $8,000; a copy of the

deed from said Everett to said Sarah H. G. Pennybacker is filed herewith as "Exhibit A" and asked to be read as a part hereof; and on the 25th day of Feb'y, 1870, before any railroad had been completed from Richmond, Va., to the Ohio river, at the point where the city of Huntington now stands, and before any city had been built there, the said Sarah H. G. Pennybacker and her husband, for the sum of $11,000 cash in hand, sold said tract of land, excepting one acre, as set out in the deed hereinafter mentioned, to C. P. Huntington, and executed and delivered to him a good and sufficient deed under the laws as they then stood for said tract, a copy of which deed is filed herewith with the certificate thereon as "Exhibit B," as a part of this bill. The said C. P. Huntington was given possession of said tract by the said Sarah so sold to him, and the said Huntington afterwards, on the 16th of October, 1871, for a valuable consideration, conveyed the same tract to your petitioner or complainant, who took possession of same, and at the same time having purchased several other large tracts of the said Huntington contiguous and in the vicinity of said tract, it laid them all off in town lots, streets, avenues, and alleys and had the place incorporated under the laws of said State as the "city of Huntington;" and it placed said lots on sale by its agents and a large number of lots were sold in the years between 1871 and 1882, until in the
21 year 1881 the said city had about four thousand people or inhabitants. Some twenty-two persons had purchased lots of said company that were in said tract known as lot No. 4 and built homes and residences upon the same, and the Chesapeake & Ohio Railroad Company purchased of said land company two rights of way across said tract, one near the center of said tract and one on the Ohio River front, and built its railway across the same at both of the places mentioned. During the time said lots and pieces of land were being sold and the said purchasers were building houses and residences thereon and the said railway was being built upon said tract the said Sarah H. G. Pennybacker was living in said city or in immediate vicinity and had notice and knew that the parties were so buying and building upon said tract, and believing themselves to be the owners in fee-simple of the lots so purchased.

In the winter of 1881, after the death of John M. Pennybacker, the husband of said Sarah, John B. Laidley, a practicing attorney in the courts of West Virginia, voluntarily went to said Sarah and told her, as she claims, that under the new constitution of West Virginia she had dower in the tract of land she had sold to C. P. Huntington, and that if she would let him bring a suit he would recover it for her and they would divide equally what was recovered. At the time he approached her and told her that she had an interest still in the land he made her promise him on the "honor of a lady" that she would not consult any other lawyer about the matter. She then and there told sais Laidley that she had sold the said tract of land to the said Huntington and had received the pay for it, and she could not understand how she had any further interest of any kind in the land. She refused to allow the said Laidley to bring

any suit in her name to recover dower or any other interest. After repeated efforts to have her bring suit, and failing, and still insisting that she had a dower, he offered to give her $500 if she would deed the land to him. The said Sarah had no business experience, having before that time relied entirely upon her husband, who was then dead, and being obligated by the said Laidley not to consult any lawyer, and without consulting any lawyer as to the effect of her acts, on the 26th day of January, 1882, she executed and delivered to
22 said Laidley a deed for said tract for the sum of $500, $100 of which he paid in cash, and gave his notes for the balance, payable in one and two years. Soon after procuring said deed, and early in March, 1882, he brought an action against your complainant in the circuit court of Cabell county, West Virginia, to eject it from said tract, which action was finally tried in said circuit court of Cabell county on the 22nd day of December, 1884, and resulted in a judgment in favor of your complainant, the defendant therein. On the 23rd of October, 1886, the supreme court of appeals of said State granted said Laidley a writ of error to said judgment. A copy of the printed record in said writ of error in said appellate court is filed herewith as Exhibit "D" and asked to be read as a part hereof. On the 26th day of November, 1887, the said court of appeals reversed the said judgment of the said circuit court and sent the case back to the said circuit court for a new trial. A copy of the judgment of the said court of appeals and the written opinion therein are made a part hereof as Exhibit "E" and asked to be read as a part hereof. And afterwards, at a circuit court of Cabell county, held on the 12th day of September, 1890, there was a trial had of the said ejectment suit before a jury and a verdict therein in favor of the plaintiff J. B. Laidley, and a judgment therein in his favor for the possession of the said tract of land so sued for, which said judgment of the circuit court was made in pursuance of the said judgment of the supreme court of appeals so rendered on the 26th day of November, 1887, as will appear from a duly certified copy of the record from the circuit court of Cabell county, West Virginia, filed herewith, marked Exhibit "F," and prayed to be read as part of this bill.

The complainant now alleges and avers that at the time C. P. Huntington purchased the said tract of two hundred and forty acres of land in controversy between this complainant and John B. Laidley and at the time this complainant purchased the said land from the said C. P. Huntington, as the law of the State of West Vir-
23 ginia then was, as construed, laid down, and expounded by the supreme court of the State of Virginia, made before the formation of West Virginia from part of Virginia, which was then the law of West Virginia, and by the supreme court of West Virginia, the said deed from Sarah H. G. Pennybacker and John M. Pennybacker, as then executed and delivered, was and is a valid contract, and passed to said C. P. Huntington a valid title to said land; and as the law of the State of West Virginia thus was, the said deed and possession taken thereunder vested rights in said C. P. Huntington that could not be legally divested by an- subsequent decision of the said su-

preme court of West Virginia changing by judicial decision the law of the said State so as to impair the obligation of the contract and rendering null said deed. Complainant further alleges and charges that the decision of the supreme court of appeals of West Virginia rendered November 26th, 1887, reversing and setting aside the said judgment in the action of ejectment and remanding the case to the circuit court for trial, and the judgment rendered therein on the 12th day of September, 1890, in pursuance thereof, were and are in violation of the Constitution of the United States, which forbids the passing of any law impairing the obligation of contracts, and that the said decisions are, by reason of being an entirely different construction of the law now from what it was at the time the deed was made, an impairment of a contract, and that they do, and the holding and ruling of the courts of the State of West Virginia does, impair, set aside, and totally defeat the obligation of the contract made by and between Sarah H. G. Pennybacker and John M. Pennybacker and C. P. Huntington, and affect, impair, set aside, and vacate the contract entered into by and between complainant and the said C. P. Huntington by which he conveyed to complainant the land in question; that, being a valid contract when entered into, it could not by a subsequent decision of the supreme court be vacated, and the rights vested thereby be annulled and the entire contract under which the title to this complainant to the entire tract of 240 acres of land vested be impaired and the obligations of the contract annulled.

24 Complainant also says, alleges, and charges that the constitution of the State of West Virginia, as adopted in convention assembled by the representation of the people and in force at the time the conveyance to C. P. Huntington was made and when he took possession of the land in controversy in this suit and when this complainant bought, had conveyed to it, and took possession thereof, provided that the laws of the State of Virginia in force then within the boundaries of West Virginia and not repugnant to the said constitution should continue as the laws of West Virginia until altered or repealed by the legislature; that the said deed was thus, under the law of Virginia, as it thus was, a valid deed and contract, and being so cannot be invalidated by a subsequent decision of the supreme court of West Virginia.

This complainant further says, alleges, and charges that at the time the said J. B. Laidley bought the pretended title and right that the said Mrs. Sarah H. G. Pennybacker had in said tract of land and took a deed therefor, dated January 26th, 1882, he knew that this complainant was in actual possession of the land in controversy, and that its actual value was at least $75,000.00; that this complainant, with the land in actual possession, was claiming the fee-simple title to the said land, and that the said Mrs. Sarah H. G. Pennybacker was not then making, did not make, and actually renounced and disclaimed all intention of making or setting up any claim to the land which she had already sold and been paid for and had conveyed to C. P. Huntington as aforesaid. The complainant also alleges that the defendant had full knowledge of the

fact that if the said Sarah H. G. Pennybacker's deed to the said C. P. Huntington was in fact void; that if she did not for ten years after her husband's death set up and enforce her claim that this complainant, holding the land in actual possession and claiming it in fee-simple under and by virtue of the deed from C. P. Huntington, would by the said failure to claim be by the lapse of said ten years *be* actually vested with an indefeasible title to the land by occupation and limitation or lapse of time; that, knowing
25 the facts and knowing that the said Mrs. Sarah H. G. Pennybacker would not assert her title, if any she had, to this land and would, by allowing the lapse of time to bar her claim, thus vest complainant with a perfect title, the said J. B. Laidley, defendant, intending to deprive this complainant of its property and to defraud it out of the land which it had bought and paid for, as aforesaid, after said Mrs. Pennybacker had refused to set up, litigate, or seek to enforce any claim against this complainant by representing to her that she had only a dower interest, which was vested in her by virtue of some supposed change of the law wrought by the "new constitution," as he termed it, prevailed on her to sell him her interest for $500.00.

The plaintiff now alleges that the deed of January, 1882, to the said J. B. Laidley was in fact procured by fraudulent statements and misrepresentations, and that Mrs. Sarah H. G. Pennybacker, when she executed it, intended only to convey to said Laidley such interest as he represented to her she had in said tract of land, and not the fee, which she had, as she stated to defendant at the time, already sold complainant.

Complainant further says that all the acts and doings of the said John B. Laidley immediately leading up to the purchase of the land from Mrs. Pennybacker in January, 1882, were one and all devised, planned, and executed by the said Laidley with the intent on his part to defraud this your complainant and divest it of its property and of the possession thereof; that in pursuance of that intention the said Laidley, acting under the decision of the circuit court of Cabell county, made in the action of ejectment, is now about to sue out a writ of possession of and for the said tract of 240 acres of land (except the one acre reserved as aforesaid), and will, if not restrained by your honor's court, have the possession delivered to him under said writ on the 12th day of November, 1890, and thereby forever deprive your complainant of any right to the said land, and will irreparably injure your complainant; and your complainant has not time between now and the morning of November 12th, 1890, to give notice of its application for an injunction; and if notice is required, possession, under the writ, will be delivered
26 before application will be or can be heard.

Forasmuch as your complainant is without remedy in the premises except in a court of equity, where matters of this kind are alone and properly cognizable, it therefore prays that the said John B. Laidley may be made a party defendant to this suit and be required to answer this bill on oath, and that to that end all necessary writs, orders, and process may issue.

And it further prays that the said John B. Laidley and all others claiming by, through, or under the said Laidley as purchasers or otherwise of said tract of land may be enjoined, restrained, and inhibited from suing out of the office of the circuit clerk of Cabell county any writ of possession, and that the said John B. Laidley and all others claiming title to the said land by or through him may be restrained, enjoined, and inhibited from in any manner taking possession of or in any manner interfering with the said land or with complainant's possession thereof.

And it also prays that the said deed executed by Sarah H. G. Pennybacker to John B. Laidley, dated the said 26th day of January, 1882, may be set aside, vacated, and annulled, and that the said John B. Laidley, his agents, servants, attorneys, and all others who claim by, through, or under him may be perpetually enjoined from carrying into effect the judgment of the court in said ejectment suit and from interfering with your complainant's possession of said land.

And the further prayer of the complainant is that the said John B. Laidley and those claiming under him be inhibited and enjoined from setting up any title to said land or proceeding to enforce the same against your complainant for the reason that such proceeding and claim would impair the obligations of the contract under which the complainant holds said land and would render null and void the laws, rules of decision, and adjudications of the highest court of the State as well as the State of Virginia which were in force at the time said contract and deed was made under which this complainant claims title.

And complainant further prays that all such other, further, and general relief be granted it as the case may require and to
27 equity seems fit, and this your complainant, as in duty bound, will ever pray, &c.

THE CENTRAL LAND COMPANY
OF WEST VIRGINIA,
By COUNSEL.

JACKSON & YEATON,
SIMMS & ENSLOW, *Sols.*

STATE OF WEST VIRGINIA, }
County of Kanawha, } *ss:*

This day personally appeared before me, the undersigned, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, H. C. Simms, who, being duly sworn, says that he is an attorney for the Central Land Company of West Virginia, and that he is personally acquainted with the facts set out in the foregoing, and that where they are stated therein as on the knowledge of the complainant are true, and that where stated on information he believes them to be true.

H. C. SIMMS.

Taken, sworn to, and subscribed before me, in my county, this 11th day of November, 1890.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

Endorsed: Circuit court United States, district of West Virginia. Filed on this 11th day of November, 1890. L. B. Delicker, clerk.

And on another day, to wit, on the 6th day of February, 1891, the following order was made and entered of record herein, and is in words and figures following, to wit:

28 THE CENTRAL LAND COMPANY OF WEST VIRGINIA *vs.* JOHN B. LAIDLEY. } In Equity.

The defendant this day tendered his demurrer to the plaintiff's bill; which is ordered to be filed. The same is set down for argument.

Which demurrer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of West Virginia.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA, a Corporation, Plaintiff, *vs.* JOHN B. LAIDLEY, Defendant. } In Equity.

The demurrer of John B. Laidley to the bill of complaint of the Central Land Company of West Virginia, a corporation, filed in the circuit court of the United States for the district of West Virginia.

The defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true in manner and form as the plaintiff hath alleged, demurs to the said bill, and for cause of demurrer says:

First. It appears by the plaintiff's allegations that on the 12th day of September, 1890, the defendant recovered a judgment in a certain action of ejectment in a State court, to wit, in the circuit court of Cabell county and State of West Virginia, against the plaintiff for an estate in fee-simple in the tract of two hundred and forty (240) acres of land, of which the plaintiff is in possession, situate in said county and fully described in the bill and exhibits; and it appears from the allegations of the bill that the defendant is about to sue out of the clerk's office of said State court a writ of possession for the purpose of carrying into effect the judgment aforesaid; and yet, contrary to the statute in such case made and provided, to wit, the act prohibiting a Federal court from enjoining any suit or pro-

ceeding pending in any State court, the plaintiff prays that this defendant may be perpetually enjoined by the process of this
29 honorable court from carrying into effect the judgment of the said State court and from suing out his writ of possession on said judgment and from interfering with the plaintiff's possession of said land.

Second. And for further cause of demurrer to the said bill defendant says that the plaintiff's allegations show no equity to enjoin a judgment at law. On the contrary, the allegations and exhibits filed with the bill show that the petition for a writ of error was the plain legal remedy for the injury complained of.

The plaintiff exhibits with its bill a copy of the record of the judgment in ejectment which it asks this court to enjoin, from which it appears that at the final trial of said action of ejectment the plaintiff moved the court to give to the jury a written instruction to the effect following, viz:

That the deed from John M. and S. H. G. Pennybacker to C. P. Huntington, bearing date February 25th, 1870, under which the plaintiff claims, was a valid conveyance of the estate of said S. H. G. Pennybacker, and that the decision of the supreme court of appeals of the State of West Virginia rendered on the 26th day of November, 1887, in said action of ejectment on writ of error, and declaring said deed void as to said S. H. G. Pennybacker, was itself null and void on the grounds that it impairs the obligation of contracts.

And it appears from the said exhibits that the State court refused said instructions and rendered judgment against complainant on the verdict of the jury, and that the plaintiff obtained a suspension of said judgment for sixty days, with intent to petition the supreme court of appeals of the State of West Virginia for a writ of error, the plain legal remedy, and the one first actually resorted to by the plaintiff, The Central Land Company of W. Va., to review the judgment complained of in the bill.

Third. And for further cause of demurrer the defendant says that the plaintiff's al-egations impeach the decision of the supreme court of appeals of the State of West Virginia rendered on the 26th day of November, 1887, on writ of error in the progress of the action of ejectment descrived in the bill, which decision declares void
30 the deed of John M. and S. H. G. Pennybacker to C. P. Huntington, dated the 25th day of February, 1870, and under which the plaintiff claims, so far as it purports to convey the estate of S. H. G. Pennybacker in the land in controversy, on the grounds that said decision impairs the obligation of contracts and divests the vested rights of the plaintiff acquired under said deed, in this, as the plaintiff avers, that as the law of the State of West Virginia stood at the date of said deed the same was a valid contract, according to the State of West Virginia State constitution, State statute, and State judicial construction of the same, and that the subsequent decision aforesaid is a violation of said constitution and statute and repugnant to the prior judicial interpretation thereof, and consequently is a sort of judicial legislation invading the plaintiff's rights

acquired under the deed aforesaid, and is therefore in violation of the Constitution of the United States.

Yet defendants say that on comparing said decision with said State constitution, statute, and prior decisions, the same appears not inconsistent, but a just and natural construction, and in harmony with the former decisions, and could by no possibility operate to divest vested rights or impair the obligation of contracts.

Fourth. And for further cause of demurrer defendant says that it appears from the record of the judgment in ejectment exhibited with the bill that on the 5th day of September, 1889, in the county of Summers, State of West Virginia, in the progress of said action, and before judgment, and when said action was called for trial in the circuit court of said county of Summers (to which court it had been removed for trial, but afterward was remanded to Cabell county), the plaintiff and defendant made and entered of record in said action a solemn agreement to the effect following—that is to say, after reciting that there was then pending in the supreme court of appeals of the State of West Virginia a certain suit in chancery, an appeal from the decree of the said circuit court of Summers county, in which the complainant, The Central Land Company of West Virginia, was plaintiff and appellant, and the defendant, J. B. Laidley, was defendant and appellee, in which suit the prayer of complainant's bill was for a cancellation of the deed dated
31 January 26th, 1882, from S. H. G. Pennybacker to this defendant, J. B. Laidley, conveying to him the land in controversy, and also for a perpetual injunction to the said action of ejectment.

And, as appears by the record of said suit then produced in court, it was agreed in open court between the plaintiff and this defendant, and entered of record at the special instance of the plaintiff, that the said action of ejectment should be stayed until the decision of said appeal, upon condition that said action of ejectment should abide the event of said chancery suit—that is to say, if the decision of the supreme court of appeals in said suit should be in favor of this defendant, then judgment in said action of ejectment should be immediately rendered in favor of this defendant without further defense or delay.

And it appears from the record of said action of ejectment exhibited with plaintiff's bill that on the 11th day of February, 1889, the said supreme court of appeals of the State of West Virginia decided said chancery suit in favor of this defendant and denied the prayer of the plaintiff's bill for a rescission of the deed aforesaid and for a perpetual injunction to said action of ejectment, and dismissed the bill.

And afterward a judgment was rendered in said action of ejectment, to wit, on the 12th day of September, 1890, in favor of this defendant, as the plaintiff hath alleged.

The defendant now says that the decision last aforesaid and the agreement of record aforesaid and the judgment in ejectment aforesaid was a final arbitrament and determination of said action of ejectment, with right to execute the same by writ of possession

thereon, and the same operates as an estoppel against the plaintiff to allege any matters inconsistent with said records and the said agreement, and from again controverting identically the same matter so adjudicated.

And so he says the plaintiff's own exhibits estop it from appealing to this court for an injunction to the writ of possession on said judgment upon the allegations of the bill and the said exhibits.

Fifth. And the defendant for further cause of demurrer says that the exhibits filed with the bill show that the charge of fraud in the procurement of the deed from S. H. G. Pennybacker to
32 this defendant for the land in controversy, dated January 26th, 1882, has been fully adjudicated by a decree of the supreme court of appeals of the State of West Virginia, rendered on the 11th day of February, 1889, in favor of defendant in a suit between the plaintiff and this defendant.

And so he says that the plaintiff is now estopped to allege any matter inconsistent with said record, and from again controverting the matter so adjudicated.

Sixth. And for further cause of demurrer the defendant says the allegations of the bill show no equity for a cancellation of the deed from S. H. G. Pennybacker to this defendant for the land in controversy, dated January 26th, 1882.

Seventh. And the plaintiff's allegations show no ground for an injunction to the writ of possession in the bill mentioned.

Eighth. The bill does not show jurisdiction. The parties, both, are residents of the State of West Virginia, and there is no Federal question presented.

Ninth. If the bill presents a Federal question, the Exhibit "F" filed with the bill shows that such question has been adjudicated by a court of competent and concurrent jurisdiction, and having relied on such defense in the State court, the plaintiff is bound by its choice of tribunals and remedies.

Therefore the defendant prays the judgment of this court whether he shall make any other or further answer to the plaintiff's bill, and that he be hence dismissed with his costs, &c.

(Signed) JOHN B. LAIDLEY, *Defendant.*

JAMES F. BROWN,
CAMPBELL & HOLT,
W. E. CHILTON, *Attorneys.*

UNITED STATES OF AMERICA, }
District of West Virginia, } *To wit:*

This day personally appeared before me, the undersigned commissioner of the United States for the district of West Vir-
33 ginia, John B. Laidley, and made oath that the foregoing demurrer is not interposed for delay in the suit in which it is filed.

Given under my hand this 22nd day of January, 1891.

G. F. RATLIFF,
U. S. Com'r, Dist. W. Va.

I, John H. Holt, of counsel practicing in the United States circuit court for the district of West Virginia, do certify that in my opinion the foregoing demurrer of John B. Laidley is well founded in point of law.

(Signed) JOHN H. HOLT.

A copy.
Teste: L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

(Fee for copy, $2.50.)

"EXHIBIT C."

(Filed Feb'y 28th, 1891.)

At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in said district, on the 16th day of December, 1890 (at chambers), the following order was made and entered of record, to wit:

C. P. HUNTINGTON ET ALS.
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Chancery.

This day this cause came on before the Honorable John J. Jackson, judge of the district court of the United States for the district of West Virginia, and as such one of the judges of the circuit court of the United States for the district of West Virginia, in vacation, in chambers, at the United States court-room, in Parkersburg, West Va., for hearing upon the application of C. P. Huntington, A. A. Low, Josiah A. Low, Richard Irvin, Edward H. R. Lyman, and Isaac E. Gates, plain-
34 tiffs, against the Central Land Company for the appointment of a receiver to take possession of the property of the said company, as prayed for in *thei* their bill heretofore filed, and this being the day set for the hearing of said application, and it appearing from affidavit filed that notice of the time and place of such application had been mailed to all of the stockholders of the company, and from the receipts for such notices and the acceptances of service which are here filed that all the stockholders had had due notice of the time and place of making such application for a permanent receiver, and it appearing to the undersigned judge that the process issued in this cause has been duly served upon the defendant, The Central Land Company of West Virginia, and the said defendant, The Central Land Company of West Virginia, now appearing hereto, by B. W. Foster, its general superintendent and agent, and assenting to the entering of this order, and there being no objection to such application on the part of any stockholder or other party in interest, and the plaintiffs representing more than one-third of all the stock of said company now asking for the appointment of a permanent receiver—

It is ordered that Collis P. Huntington be, and he is hereby, appointed a special receiver of this court, with power, and he is hereby

so authorized, empowered, and directed, to take possession of all the property belonging to the Central Land Company of West Virginia, and especially of the tract of 240 acres of land known as lot No. 4 of the Frampton land, sold by S. H. G. Pennybacker to C. P. Huntington and by him to the Central Land Company, in the corporate limits of the city of Huntington; and F. B. Enslow, special receiver, having filed his report showing that on the 12th day of November, 1890, he took possession of all the real estate of said company, including said 240-acres tract, he is directed to deliver same to said Collis P. Huntington, as such receiver, and upon such delivery said special receiver is discharged from further action under the decree of this court of November 11th, 1890, and the defendant, The Central Land Company, its agents and servants, are hereby directed to turn over to Collis P. Huntington all books, papers, and accounts relating to said company, its business and affairs, and to deliver to him all notes, deeds, bonds, securities, evidences of debts, and
35 all property, evidences of property held by said company, and to pay over to said receiver all money and moneys now on hand belonging to said company.

And said receiver is hereby directed to make report to the next term of this court, showing what real estate and other property came to his hands.

But this order is not to take effect until said Collis P. Huntington shall give bond as such receiver in the penalty of two hundred thousand ($200,000.00) dollars, with security to be approved by one of the judges of this court, conditioned for the faithful performance of his trust and for paying off and accounting for according to law all such money and moneys as may come into his hands, and for the faithful compliance with all orders of the court made and to be made in reference to the handling, disposition, and control of the bonds, stocks, certificates, evidences of debt, and property that may come into his hands as such receiver.

And it is further ordered that the said C. P. Huntington may execute said bond and give such security before any judge of the United States circuit court for the southern district of New York, which bond is to be approved by one of the judges of this court.

And for the purpose of carrying out the requirements of the said bill and winding up the business of the said defendant corporation, the said receiver is hereby authorized to collect the debts due it by suits or otherwise.

And in order to carry into effect the foregoing directions and requirements and to wind up the business of said defendant company, said receiver, by himself, his agent, servant, or attorneys, is hereby authorized and empowered to do and perform any and all acts necessary to carry the same into effect in the same and as full a manner as the said company could do through its officers, agents, and servants, but he shall report annually, unless otherwise ordered, to this court his action hereunder.

But the said receiver, under this order, is not to sell or convey any of the real estate of the defendant company until the
36 further order of the court in term time, except that such special receiver is authorized to complete any contracts here-

tofore made by the said defendant company of any of its real estate, and upon the payment to him of the purchase-money and the execution of any notes for the deferred payments, according to the contract of sale, then said special receiver is hereby authorized and empowered for and on behalf of the said company to execute fit and proper deeds for said land or lots, conveying all interest of the said company to said purchasers as provided for in their contracts of purchase.

(Signed) J. J. JACKSON,
Judge D. C. U. S., D. W. Va.

Dec. 16, 1890.

A copy.
Teste: L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

37 EXHIBIT E.

(Filed Feb'y 28, 1891.)

John B. Laidley to W. S. Laidley. } Deed.

This deed, made this 5th day of August, 1889, between John B. Laidley of the first part and W. S. Laidley, trustee, of the other part, witnesseth, that the said John B. Laidley, for and in consideration of the sum of one dollar in hand paid by said W. S. Laidley to the said John B. Laidley, the receipt whereof is hereby acknowledged, and for other valuable considerations moving from said W. S. Laidley, doth hereby give, grant, sell and hereby convey to the said W. S. Laidley the undivided three-fourths (¾) of all my right, title, claim and interest in and to all the real estate in the county of Cabell and city of Huntington, owned and claimed by me, and which is described in a deed executed by S. H. G. Pennybacker to me, the said John B. Laidley, dated the 26th January, 1882, containing about 240 acres, more or less, to which deed reference is here made for a more particular description of the property hereby conveyed.

In trust to sell and convey any or all of the said property hereby conveyed, or to mortgage or convey in trust any part thereof, or all thereof, and by his deed to convey the title hereby conveyed.

And then first for the support and maintenance of Vesta Laidley and Alberta Laidley during their natural lives, then for the support of Jennie Laidley and her children, Robert and Jean, not exceeding two hundred dollars per annum, until the said children are twenty-one years of age, and a fund shall be raised and set
38 apart to satisfy and pay the aforesaid annuities and maintenance herein mentioned, the amount to be paid for the support of the said Vesta and Alberta not to exceed $800 per annum. But before any sum is to be paid by said trustee hereunder, he shall

pay off and discharge all debts that I now owe, or any liabilities that I am now liable for, and the remainder shall be disposed of by said trustee as he and the said grantor shall together direct and agree upon, and, in the event of a failure to make such disposition, then the same shall go as by the will of the said grantor he may direct. The said trustee shall be allowed ten per cent. of all moneys that shall come into his hand, as such trustee, as compensation for his services hereunder, also costs & expenses. All powers heretofore granted and made in relation to the property hereby conveyed are hereby revoked and annulled. And the property hereby conveyed is hereby conveyed with covenants of general warranty.

Witness the following signature and seal.

JOHN B. LAIDLEY. [SEAL.]

I certify that the words "the undivided three-fourths of" were interlined before signing and acknowledgment.

A. G. TEBBETTS, *N. P.*

STATE OF WEST VIRGINIA, }
Kanawha County, } *ss:*

I, A. G. Tebbetts, a notary public in and for the county and State aforesaid, do certify that John B. Laidley, whose name is signed to the writing above bearing date on the 5th day of August, 1889, has this day acknowledged the same before me in my said county.

Given under my hand this 5th day of August, 1889.

A. G. TEBBETTS,
N. P. in and for Kanawha Co., W. Va.

39 STATE OF WEST VIRGINIA, }
Cabell County Court Clerk's Office. }

This deed, from John B. Laidley to W. S. Laidley, trustee, bearing date the 5th day of August, 1889, was this day presented to me, the clerk of said court, and the same, together with the certificate of acknowledgment thereon endorsed, is duly admitted to record.

Given under my hand this 8th day of November, 1889, at 11 o'clock and 30 minutes a. m.

F. F. McCULLOUGH,
Clerk of Cabell County Court.

A true copy from the record.
Teste:

F. F. McCULLOUGH,
Clerk C. C. C.

Febr'y 27, 1891.

40 "EXHIBIT F."

(Filed Feb'y 28th, 1891.)

(The above-mentioned exhibit is not now found among the record- of this office.—Clerk.)

Subpœna in Chancery.

UNITED STATES OF AMERICA, } ss:
District of West Virginia, }

The President of the United States of America to the marshall of the district of West Virginia, Greeting:

You are commanded to summon J. B. Laidley, W. S. Laidley, C. W. Campbell, Wm. Duster, R. T. Harvey, Jackson Jasper, James Jasper, A. L. Williams, S. R. Hall, C. F. Remley, S. A. Remley, S. J. Love, I. Myers, Michael O'Brien, Clay Greenwell, Catherine Kneff, Margaret Sands, and Charles Rose, citizens of and residents in the State of West Virginia; J. L. M. Curry, a citizen of and resident in the State of Virginia; the unknown heirs of J. M. Noble, deceased, citizens of and residents in the State of West Virginia; the unknown heirs of L. F. Jobe, deceased, citizens of and residents in the State of ——; the unknown heirs of E. T. Mitchell, deceased, citizens of and residents in the State of ——; J. E. Erwin, a citizen of and resident in the State of Tennessee, and Vester Laidley, a citizen of and resident in the State of California, if they be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at rules, to be held in the clerk's office of said court, at Parkersburg, on the first Monday in April next, to answer a certain bill in chancery now filed and exhibited in said court against them by C. P. Huntington, special receiver of the Central Land Company of West Virginia, a citizen of and resident in the State of New York. Hereof you are not to fail under the penalty of the law thence ensuing; and have then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 28th day of February, A. D. 1891, and in
41 the 115th year of the Independence of the United States of America.

Attest:
[SEAL.] L. B. DELLICKER, *Clerk.*

Memorandum.

The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of April, 1891; otherwise the said bill may be taken *pro confesso.*

L. B. DELLICKER, *Clerk.*

Copy.
Teste: —— ——, *Clerk.*

(Endorsed:) Executed the within writ by delivering an office copy thereof to John B. Laidley and C. W. Campbell, each respectively, at the office of C. W. Campbell, in the city of Huntington, W. Va., on the 2nd day of March, 1891. H. S. White, U. S. marshall, per G. Stout, deputy. Not served on the other defendants by direction of plaintiff's attorney. Marshall's costs, 2 servics, $4.00.

And at the same day, to wit, on the 28th day of February, 1891, the foloowing order was made and entered of record, to wit:

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia,
vs.
JOHN B. LAIDLEY ET ALS.
} In Equity.

This day came the complainant, C. P. Huntington, special receiver, by Jackson & Yeaton and Simms & Enslow, his attorneys, and presented his bill, verified by affidavit, in open court,
42 praying, among things, an injunction against John B. Laidley, C. W. Campbell, J. E. Erwin, and W. S. Laidley, enjoining them and each of them, their agents, servants, and attorneys, from any interference whatever with the possession of the complainant, as special receiver, of the tract of two hundred and forty (240) acres of land known as lot No. 4 of the Frampton land, in the city of Huntington, as described in the bill and exhibits, or of any part thereof.

On consideration whereof the bill is ordered to be filed; and, it appearing that there is danger of irreparable injury from delay, a temporary injunction is allowed, as prayed for, restraining, enjoining, and inhibiting the said John B. Laidley, C. W. Campbell, J. E. Erwin, and W. S. Laidley and each of them, their agents, servants, and attorneys, from interfering in any manner whatsoever with the possession of the said C. P. Huntington, special receiver, of the said tract of two hundred and forty (240) acres of land, less one (1) acre, or any part thereof, known as lot No. 4 of the Frampton land, as described and set out in the bill and exhibits, and from doing any act which will tend to affect the rights of said special receiver to the possession of said land, and also restraining them and each of them, their agents, servants, and attorneys, from proceeding to assert and enforce any claims against the said several lots in the said city of Huntington sold by said Central Land Company out of said two hundred and forty (240) acre tract of land, as set out in said bill, and from proceeding, by their agents, employees, or servants, to take possession of said lots, and also from making sales of said several lots or any of them until the further order of the court.

And the motion for a permanent injunction is set down for hearing at the United States court-room, at the city of Parkersburg, West Virginia, on Tuesday, the third day of March, 1891, at 10 o'clock a. m.

But this temporary restraining order is not to take effect until the complainant or some responsible person for him shall enter into bond, with approved security, in the penalty of one thousand ($1,000) dollars, before the clerk of this court, conditioned to satisfy and pay all damages that may accrue to the defendants by
43 reason of the suing out of this injunction should the same be hereafter dissolved.

Service on the defendants of a copy of this order shall be deemed and taken as legal notice of the injunction herein granted.

"Injunction Bond."

(Filed Feb'y 28th, 1891.)

Know all men by these presents that we, F. B. Enslow, for and on behalf of C. P. Huntington, special receiver, principal, and B. W. Foster, as surety, are held and firmly bound unto John B. Laidley, C. W. Campbell, J. E. Erwin, and W. S. Laidley in the sum of one thousand dollars ($1,000); for the payment whereof, well and truly to be made, we bind ourselves, our heirs, and executors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 28th day of February, 1891.

The conditions of the above obligation are such that whereas C. P. Huntington, special receiver of the Central Land Company of West Virginia, has brought his suit in chancery in the circuit court of the United States for the district of West Virginia, at Parkersburg, against John B. Laidley, C. W. Campbell, J. E. Erwin, and W. S. Laidley, and has obtained an injunction restraining, enjoining, and inhibiting said John B. Laidley, C. W. Campbell, J. E. Erwin, and W. S. Laidley and each of them, their agents, servants, and attorneys, from interfering in any manner whatsoever with the possession of the said C. P. Huntington, special receiver, of the tract of two hundred and forty acres of land, less one acre, or any part thereof, known as lot No. 4 of the Frampton lands, as described and set out in the bill and exhibits, and from doing any act that will tend to affect the rights of said special receiver to the possession of said land, and also restraining them and each of them, their agents, servants, and attorneys, from proceeding to assert and enforce any claim against the several lots in the city of Huntington sold by said Central Land Company out of said two hundred and forty acre tract of land, as set out in said bill, and from proceeding by their agents, employés, or servants to take possession of said lots, and also from making sales from said several lots or any of them until the
44 further order of the court:

Now, if the said C. P. Huntington, special receiver, shall satisfy and pay all damages that may accrue to the defendants by reason of the suing out of this injunction, should the same be hereafter dissolved, then this obligation to be void; otherwise to remain in full force and effect.

F. B. ENSLOW. [SEAL.]
B. W. FOSTER. [SEAL.]

Signed, sealed, and acknowledged before me this 28th day of February, A. D. 1891.

L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

Approved:
L. B. DELLICKER, *Clerk.*

Injunction.

In the Circuit Court of the United States for the District of West Virginia.

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia,
vs.
JOHN B. LAIDLEY ET ALS.
} In Equity.

This day came the complainant, C. P. Huntington, special receiver, by Jackson & Yeaton and Simms & Enslow, his attorneys, and presented his bill, verified by affidavit, in open court, praying, among other things, an injunction against John B. Laidley, C. W. Campbell, J. E. Erwin, and W. S. Laidley, enjoining them and each of them, their agents, servants, and attorneys, from any interference whatsoever with the possession of the complainant, as special receiver, of the tract of two hundred and forty (240) acres of
45 land, known as lot No. 4 of the Frampton land, in the city of Huntington, as described in the bill and exhibits, or of any part thereof.

On consideration whereof the bill is ordered to be filed, and it appearing that there is danger of irreparable injury from delay, a temporary injunction is allowed as prayed for, restraining, enjoining, and inhibiting the said John B. Laidley, C. W. Campbell, J. E. Erwin, and W. S. Laidley, enjoining them and each of them, their agents, servants, and attorneys, from interfering in any manner whatsoever with the possession of the said C. P. Huntington, special receiver, of the said tract of two hundred and forty (240) acres of land less one (1) acre, or any part thereof, known as lot No. 4 of the Frampton land, as described and set out in the bill and exhibits, and from doing any act which will tend to affect the rights of the said special receiver to the possession of said land, and also restraining them and each of them, their agents, servants, and attorneys, from proceeding to assert and enforce any claims against the said several lots in said city of Huntington sold by said Central Land Company out of said two hundred and forty (240) acre tract of land, as set out in said bill, and from proceeding, by their agents, employés, or servants, to take possession of said lots, and also from making sales of said several lots or any of them until the further order of the court.

And the motion for a permanent injunction is set down for hearing at the United States court-room, at the city of Parkersburg, West Virginia, on Tuesday, the third day of March, 1891, at 10 o'clock a. m.

But this temporary restraining order is not to take effect until the complainant, or some responsible person for him, shall enter into bond, with approved security, in the penalty of one thousand ($1,000.00) dollars, before the clerk of this court, conditioned to satisfy and pay all damages that may accrue to the defendants by reason

of the suing out of this injunction should the same be hereafter dissolved.

Service on the defendants of a copy of this order shall be deemed and taken as legal notice of the injunction herein granted.

46 A copy.

Teste:

[SEAL.] L. B. DELLICKER,
Clerk Cir. Ct. U. S., D. W. Va.

(Endorsed:) Executed the within order of injunction upon John B. Laidley and C. W. Campbell by delivering to each of them in person respectively office copies thereof, at the office of C. W. Campbell, in the city of Huntington, W. Va., on the 2nd day of March, 1891. Not served as to other defendants by direction of plaintiff's attorney. H. S. White, U. S. marshal, per G. Stout, deputy.

Marshal's Costs.

2 services	$4.00
121 miles at 6 cts. — mile	7.26
	$11.26

And at another day, to wit, on the 3rd day of March, 1891, the following order was made and entered of record, to wit:

CENTRAL LAND COMPANY
vs.
JOHN B. LAIDLEY. } In Chancery.

and

C. P. HUNTINGTON, Special Receiver,
vs.
JOHN B. LAIDLEY and Others. } In Chancery.

By consent and agreement these causes came on this day to be heard together upon the motion of the complainants for a permanent injunction in each case; and thereupon the defendant filed his demurrer to the bill of Huntington, special receiver, against Laidley and others; whereupon both cases were argued by counsel.

On consideration whereof the court is not advised at this
47 time of its judgment and takes time to consider thereof.

It is therefore ordered that the temporary injunction heretofore allowed in each case be continued until the further order of the court, and that the plaintiffs file a printed brief within thirty (30) days from this date, and that the plaintiffs file their replication to the defendants' brief within sixty days (60) from this date.

Demurrer of John B. Laidley.

(Filed March 3rd, 1891.)

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia,
vs.
JOHN B. LAIDLEY ET ALS. } In Equity.

The demurrer of John B. Laidley and C. W. Campbell, J. E. Erwin, Vester Laidley, and W. S. Laidley to the bill of complaint of C. P. Huntington, special receiver of the Central Land Company of West Virginia, a corporation, filed in the circuit court of the United States for the district of West Virginia against them and others.

1. These defendants say that the plaintiff has not shown title in himself, legal or equitable, to maintain his bill, because the deed named as evidence thereof as his Exhibit (A) filed therewith as part thereof is absolutely null and void, so far as it purports to be the deed and contract of S. H. G. Pennybacker, and it is not alleged that J. M. Pennybacker had title to the land.

2. Said bill is multifarious, in this, that it alleges a claim to an interest in the land in controversy set up by defendant Vesta Laidley and prosecuted by her suit in the State court, and which claim is in no way connected with or dependent upon the claim of John B. Laidley to said land.

3. Neither the Central Land Company of West Virginia nor its special receiver, C. P. Huntington, has any title, interest, or
48 claim, either legal or equitable, to the several lots and parcels sold and conveyed out of said 240 acres of land to various parties, named in the bill, and hence cannot maintain this suit for want of interest in the subject-matter.

4. The said plaintiff is not in possession of said several lots so sold and conveyed out of said tract of 240 acres of land, and cannot maintain a suit to quiet the title to said land or said lots.

5. As a bill to avoid a multiplicity of suits it does not show that any suit has been instituted upon the warranty in the land company's conveyances of said lots, nor does it show that any cause of action has arisen on such warranties nor that such cause of action ever will arise; in other words, the said bill does not show that there has ever been or ever will be an eviction of said vendee*d*, either actual or constructive, by the said John B. Laidley or any other defendant to said bill.

6. The bill is otherwise insufficient, indefinite, and uncertain, and defendants pray the judgment of this court whether they ought to be compelled to make other or further answer to said bill.

JOHN B. LAIDLEY.
C. W. CAMPBELL.
J. E. ERWIN.
VESTER LAIDLEY.
W. S. LAIDLEY.

UNITED STATES OF AMERICA,
District of West Virginia, } *To wit:*

This day personally appeared before the undersigned, clerk of the United States circuit court for the district of West Virginia, John B. Laidley, defendant named in the foregoing demurrer, and made oath that the foregoing demurrer is not interposed for delay in the suit in which it is filed.

JOHN B. LAIDLEY.

Taken, sworn to, and subscribed before me, this 3rd day of March, 1891, in my office.

49

L. B. DELLICKER,
Clerk Cir. Ct. U. S., D. W. Va.

I, C. W. Campbell, of counsel for defendant, practicing in the United States circuit court for the district of West Virginia, do certify that in my opinion the foregoing demurrer of John B. Laidley *et al.* is well founded in point of law.

C. W. CAMPBELL.

And at another day, to wit, on the 30th day of September, 1891, the following order was made and entered of record, to wit:

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY. } In Equity.

and

C. P. HUNTINGTON, Receiver,
vs.
JOHN B. LAIDLEY ET AL. } In Equity.

By consent of the parties to these suits, by their attorneys, the same are submitted to the circuit court of the United States in and for the district of West Virginia, composed of the Chief Justice of the Supreme Court of the United States and of the judge of the district court of the United States for the district of West Virginia, on the demurrers to the bills and on the motions to dissolve the injunctions in the case on printed briefs to be filed by counsel in each case within thirty days from this date.

SIMMS & ENSLOW &
J. H. FERGUSON,
Att'ys for Plaintiffs.
BROWN & JACKSON,
Att'ys for J. B. Laidley, D'f't.

50 And at another day, to wit, on the 16th day of January, 1892, the following order was made and entered of record, to wit:

CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY ET AL.
C. P. HUNTINGTON, Receiver,
vs.
JOHN B. LAIDLEY ET AL.
} In Chancery.

These causes having come on to be heard together by consent on the demurrer filed and the motions to dissolve the injunctions made therein, respectively, and the court being now fully advised in the premises, it is ordered, adjudged, and decreed that the demurrer in each of said causes be, and the same is hereby, overruled, with leave to the defendants to answer, and that the injunction in each of said causes be, and the same is hereby, continued in force until the further order of the court.

Enter.

MELVILLE W. FULLER,
Chief Justice & Circuit Justice, Fourth Circuit.

Jan. 12, 1892.

And at the same day, to wit, on the 16th day of January, 1892, the following order was made and entered of record, to wit:

CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY ET AL.
C. P. HUNTINGTON, Receiver,
vs.
JOHN B. LAIDLEY ET AL.
} In Equity.

This day came John B. Laidley, by counsel, and moved the court that he be given a period of sixty days within which to plead or answer in each of said causes, and such leave is accordingly given.

51 *Answer of J. B. Laidley et al.*

(Filed March 12th, 1892.)

The answer of John B. Laidley, W. S. Laidley, trustee; C. W. Campbell, and J. E. Erwin to the bill of complaint of C. P. Huntington, special receiver, filed against them and others in the circuit court of the United States for the district of West Virginia, at Parkersburg.

The defendants aver that on the 18th day of August, 1865, one R. J. Everett conveyed in fee the land in controversy to S. H. G. Pennybacker, a *feme covert*, she being the wife of Jno. M. Pennybacker, the consideration of which conveyance, eight thousand dollars, was advanced and paid by Mrs. Pennybacker's father, and was a gift to her from him. The legal effect of said conveyance was to

vest in the husband by marital right an estate for his life, and to vest in the wife the estate in fee, subject only to the said interest of the husband, a copy of which said deed is herewith exhibited as part of this answer, marked No. 1.

On the 25th day of February, 1870, J. M. Pennybacker, by deed of that date, conveyed his interest in said land to C. P. Huntington and placed him in possession. This deed purports also to convey the estate of the wife, S. H. G. Pennybacker, but the certificate of acknowledgment was defective and the deed was void as to her, and she did not convey her interest to C. P. Huntington by that deed or any other. A copy of the said deed is exhibited with plaintiff's bill marked (A) and is asked to be read as part of this answer.

On the 16th day of April, 1870, C. P. Huntington, by deed of that date, with covenants of special warranty, conveyed his interest in said land to the Central Land Company of West Virginia and placed it in possession, but the estate thereby conveyed terminated by the death of Jno. M. Pennybacker on the 5th day of July, 1881.

Respondents say that C. P. Huntington, as special receiver, has not acquired any title whatever, legal or equitable, by conveyance or otherwise, to the land in question or to any part thereof.

On the 26th day of January, 1882, Mrs. S. H. G. Pennybacker, six months after the death of her husband, sold and conveyed
52 in fee-simple, by deed of that date, her estate in said land to the defendant Jno. B. Laidley. A copy of said deed is exhibited with the plaintiff's bill, marked (J. B. L.), and is asked to be read as part of this answer.

At the time of this conveyance both Laidley and S. H. G. Pennybacker had full knowledge of the facts affecting her title to the said land and of the nature of the Central Land Company's claim of title thereto and of the defect therein arising from said defective acknowledgment. There was no fraud in the transaction and no conspiracy by said Laidley and Pennybacker to defraud said Central Land Company; said Laidley did not at any time make any false representations of law or fact to Mrs. Pennybacker in making the said purchase. He did not tell her that she had dower in the land or that her interest was only a dower interest. He did not bind her not to consult a lawyer. The transaction was fully and clearly understood by them. It was a speculative sale and purchase of Mrs. Pennybacker's right of action to recover land in the adverse possession of another, and it was authorized by the laws of the State of West Virginia.

Immediately after his purchase said Laidley, to wit, in March, 1882, instituted his action in ejectment against the Central Land Company of West Virginia in the circuit court of Cabell county, State of West Virginia, to recover the possession of the said tract of 240 acres of land situate in said county. In December, 1884, judgment was rendered against said Laidley in said action of ejectment, but the same was reversed on a writ of error on the 26th day of November, 1887, by the supreme court of appeals of the said State and the case was remanded for a new trial, the said court holding the

deed aforesaid to C. P. Huntington null and void as to S. H. G. Pennybacker on account of the defective acknowledgment. On the 12th day of September, 1890, a judgment was rendered by the circuit court of Cabell county in said action in favor of the said Laidley for an estate in fee-simple in said land, and on petition presented by the said Central Land Company of West Virginia to the supreme court of appeals of said State a writ of error was refused on the grounds stated by the court that the said judgment was clearly right.

53 The writ of possession awarded on said judgment was suspended by the injunction awarded by this court on the bill of the said Central Land Company of West Virginia filed for that purpose on the 16th day of Sept., 1890, against J. B. Laidley in the United States circuit court. A copy of the record of said last-named suit for injunction in the United States circuit court is exhibited with plaintiff's bill in this case, marked "B," and a copy of the record of said judgment in ejectment of Sept. 12th, 1890, as one of the exhibits filed with the bill in said last-named suit, is also made part of the plaintiff's bill in this cause and is asked to be read as part of this answer.

Pending the above-named action of ejectment, to wit, at June rules, 1887, the Central Land Company of West Virginia exhibited its bill in chancery in the circuit court of Cabell county against the defendant- John B. Laidley and S. H. G. Pennybacker and others, praying a perpetual injunction to said action and for a cancellation of said Laidley's title deed upon the same grounds that the plaintiff hath here alleged in his bill, viz., that said deed was procured by said Laidley by falsely representing to Mrs. Pennybacker that she had a dower interest only in said land. The allegations of the bill were fully denied by said Laidley and the cause was heard on the 14th day of May, 1888, in the circuit court of Summers county, State of West Virginia, to which it had been removed for further proceedings on the bill and amended bill, demurrer, answer, replication, exhibits, and depositions taken and filed in the case, and a decree was rendered by said court dismissing said suit at the costs of the plaintiff. In said amended bill said Central Land Company of West Virginia alleged that the said J. B. Laidley was seized in fee of the land in controversy. From said decree the said land company appealed to the supreme court of appeals of the State of West Virginia, and on the 11th day of February, 1889, said court by a unanimous bench sustained the decree aforesaid and dismissed said suit; and sais decree remains unreversed and in full force and effect. A copy of the record of said suit and of the judgment and opinion of said supreme court of appeals are herewith exhibited as part of this answer, marked No. (2).

54 The said decree precludes the Central Land Company of West Virginia and the plaintiff, C. P. Huntington, special receiver, claiming to represent the said company, from again alleging the same matters and seeking the same relief as by the said bills it hath already done, and defendants plead and rely upon the said decree in bar of the plaintiff's suit.

Before the final hearing of the said suit in chancery in the su-

preme court of appeals aforesaid, to wit, on the 5th day of Sept., 1888, upon the calling of the action of ejectment above mentioned for trial in the circuit court of Summers county, to which it had been removed for further proceedings, the Central Land Company of West Virginia, by attorneys Simms & Enslow and Jas. H. Ferguson, moved said court to postpone the trial of said action until the final judgment of the supreme court of appeals in the said suit in chancery. Said Laidley resisted said motion, but the court granted the delay asked for, upon the condition, and not otherwise, that said ejectment suit should abide the event of said appeal in said chancery suit; that said Central Land Company of West Virginia, in the event that said chancery suit should be finally determined against it in said supreme court of appeals, would interpose no further defense or delay in said action of ejectment, conditions imposed by the court under and in accordance with the provisions of the statute of West Virginia, said conditions were accepted and agreed to in open court by said company, and entered of record in said action of ejectment on the day last aforesaid, and said action was in pursuance of said motion and upon said conditions stayed until the final decree of the court of appeals in said chancery cause.

And the defendant say that the plaintiff, as special receiver of the Central Land Company of West Virginia, is estopped by its said solemn agreement of record from asking an injunction to the writ of possession awarded in said action of ejectment and from asking a cancellation of said Laidley's title deed upon any grounds which were or might have been set up in said chancery suit, and he pleads and relies on said agreement as a bar to this suit. A copy of said agreement of record is filed herewith as part of this answer, marked Exhibit No. (3).

Said agreement was relied on by Laidley at the trial of said action of ejectment at the Sept. term of Cabell county circuit
55 court in the year 1890, and was read in evidence to the jury on said trial, as appears by the record of said judgment, exhibited with the bill of the Central Land Company of West Virginia, filed in the circuit court of the United States for the district of West Virginia, against the said Laidley; which bill and its exhibits are referred to and made a part of the bill in this cause and are asked to be read as a part of this answer.

The defendants say that, to wit, on the 8th day of December, 1887, nine days after the supreme court of appeals had sustained Laidley's title to the land in controversy in said action of ejectment, Mrs. S. H. G. Pennybacker brought a suit in chancery in the circuit court of Cabell county against said Laidley to cancel the deed she had made him for said land on the grounds set up in the chancery suit aforesaid of the Central Land Company of West Virginia, but the allegations of the bill were fully denied by answer and negatived by the depositions filed in the cause, and, although the bill was sustained by the circuit court of Kanawha county in July, 1889, the decree was reversed and the suit dismissed by the supreme court of appeals of West Virginia on the 25th day of March, 1890, on appeal taken by said Laidley. A copy of the record of said suit and of the

judgment and opinion of said supreme court is here filed as part of this answer, marked Exhibit No. (4).

Shortly after the institution of the last-named suit the said S. H. G. Pennybacker, by writing under her hand and seal, assigned her interest therein to one Dr. E. H. Pardee, of California, a relative of C. P. Huntington, and said assignment, as defendant believes and therefore alleges, was for the benefit of the said Huntington or the Central Land Company of West Virginia.

At the trial of said action of ejectment in Sept., 1890, the plaintiff, The Central Land Company of West Virginia, moved the court to instruct the jury to the effect that the deed hereinbefore mentioned from J. M. Pennybacker and wife to C. P. Huntington for the land in question was a valid deed, notwithstanding that the supreme court of appeals of West Virginia had declared it void as to the wife, basing said instructions on the ground that said decision impaired the obligation of contracts, divesting vested rights in contra-
56 vention of the Constitution of the United States, but the instruction was refused by the said circuit court of Cabell county; to which ruling of said court a writ of error was refused by the said supreme court of appeals of West Virginia, as before stated, on the ground that said judgment was clearly right, and the defendants — that the plaintiff is thereby estopped from again setting up the same matter in this bill in this cause for the purpose of avoiding said deed, and he pleads and relies on said estoppel in bar of this suit.

About the time of the commencement of the said action of ejectment the said Laidley also instituted 19 other separate actions in ejectment in the said circuit court of Cabell county against the following-named parties in possession of specific lots or parcels of said land claiming title from the Central Land Company of West Virginia, to wit, S. R. Hall, C. F. Remley and S. A. Remley, Clay Greenwell, Catherine Kneff, Margaret Sands, William Duster, Albert Napier, S. J. Love, J. M. Noble, R. T. Harvey, S. F. Jobe, George Pece, Michael O'Brien, A. L. Williams, Jackson Jasper, and Robert Wodson, and in each of said actions the several defendants filed disclaimers as to all of the said land except the specific lots claimed by them, and as to such specific lots or parcels claimed by them severally each of said defendants plead the general issue and set up a claim for improvements, and at the September term of said court, in the year 1890, verdicts were returned for the plaintiff J. B. Laidley in each of said actions for a fee simple estate in said several lots, and at the time of finding their verdict the jury, by the order of court, entered on record in each of said actions at the said Sept. term, in the year 1890, also ascertained and returned the value of the several naked lots, without improvements, and also the value of the several improvements constructed thereon, and thereupon the plaintiff relinquished his title to the defendants in each of said actions, and a judgment was rendered in his favor in each of said actions for the amount found by the jury as the value of each respective lot and the costs of suit, as follows, to wit:

Against S. R. Hall, for value of lot 13, block 68, $600 and costs;

against C. F. Remley and S. A. Remley, consolidated, for value
57 of lot 12, block 68, $500 and costs; against Clay Greenwell for value of lot 10, block 68, $450 and costs; against Catherine Kneff for value of lots 8 & 9, block 68, $900 and costs; against Margaret Sands for value of lot 7, block 68, $450 and costs; against William Duster for value of lot 11, block 67, $450 and costs; against Albert Napier for value of lot 18, block 67, $450 and costs; against S. J. Love for value of lots 8 & 9, block 67, $900 and costs; against J. M. Noble's heirs for value of lots 10, 15, & 16, block 67, $1,800 and costs; against R. T. Harvey for value of lot 4, block 67, $450 and costs; against E. T. Mitchell's heirs for value of lots 13 & 14, in block 67, $1,350 and costs; against S. F. Jobe's heirs for value of lot 11, block 68, $450 and costs; against Geo. Peco for value of lot 6, block 68, $450 and costs; against Michael O'Brien for value of lot 4, block 68, $450 and costs; against A. L. Williams for value of lot 14, in block 68, $750 and costs; against Jackson Jasper for value of lot 5, block 68, $450 and costs; against Robert Woodson and D. W. Emmons, dismissed, amounting altogether to the sum of $10,850.00, and total costs amounting to $—; and the defendants in said judgments and each of them, failed to pay the said several sums of money and each of them; and afterwards, at the December term, in the year 1890, of the said circuit court of Cabell county, orders were made in each of said actions in ejectment, pursuant to the statute of West Virginia, directing commissioners to sell the lots aforesaid to pay the indebtedness aforesaid respectively. Copies of the records of said judgments and orders of sale are herewith exhibited as parts of this answer, marked, each record, by the name of the defendant therein as above enumerated endorsed on the back thereof.

And the commissioners, acting under said orders, had advertised the sale of said lots at the front door of the court-house of Cabell county for March 2nd, 1891, and were about to execute said orders of sale when they were enjoined by this honorable court on the bill filed by the plaintiff in this cause. The defendants say that said special receiver, C. P. Huntington, is not and never was in possession of said lots and has *not* title or interest therein. Said
58 claimants are in possession under a general warranty deed from the Central Land Company and claim title under said deeds against the said receiver and not under him.

The defendants say that it is true that the statute of West Virginia in force in 1870, when Huntington made his purchase, empowering married women to convey land, is the same as the statute of Virginia in force at the time of the formation of the new State; but it is not true that said statute had ever been construed by the courts of last resort of the old State otherwise or different from the construction given said statute by the supreme court of appeals of West Virginia; that the decisions of the two States on that subject are all in harmony and are not inconsistent with each other or contradictory. It is not true that since the year 1870 the courts of the State of West Virginia have changed the settled rule of con-

struction of said statute so that deeds before held good are now held invalid.

It is not true that Laidley was seeking to take possession of the 21 lots mentioned in the bill; on the contrary, he had caused the same to be advertised for sale under the orders of the court aforesaid; and the defendants say that the plaintiff and his attorneys, although fully cognizant of the facts herein alleged, withheld the same from the face of his bill for the purpose of perpetrating a fraud on the jurisdiction of this court, well knowing that if the facts were truthfully disclosed this court would not assume jurisdiction to enjoin the said judicial sales in the said State court.

It is not true, as alleged, that the highest courts in the State of Virginia had, prior to the time of the execution of the said Pennybacker deed to C. P. Huntington, to wit, Feb. 25th, 1870, held acknowledgments similar to the one attached to that deed a good and substantial compliance with the statute. It is not true that the claimants in possession of the lots hereinbefore described became vested with the title to said lots by virtue of their deeds from the Central Land Company, but only with such claim or title as was conveyed to C. P. Huntington by the Pennybacker deed—that is to say, the interest of John M. Pennybacker. It is not true that any of the decisions of the supreme court of West Virginia has changed or divested their rights, titles, or estates derived from or
59 under the said deed.

It is true that J. B. Laidley, pending said action of ejectment, conveyed to C. W. Campbell and undivided one-third interest in said land, and also to W. S. Laidley, trustee, an undivided three-fourths interest in the remainder. It is true that C. W. Campbell conveyed an undivided interest in said land to Geo. F. Donnella, who conveyed an undivided interest to J. E. Erwin.

And, having fully answered, the defendants pray that the temporary restraining order entered on the plaintiff's bill be set aside, and that they be hence dismissed with their costs.

J. B. LAIDLEY,
C. W. CAMPBELL,
W. S. LAIDLEY, *Trustee*,
J. E. ERWIN,
By COUNSEL.

JAMES F. BROWN,
CAMPBELL & HOLT, *Att'ys.*

UNITED STATES OF AMERICA, }
District of West Virginia, } *To wit:*

This day personally appeared before me, the undersigned, commissioner of the United States for the district of West Virginia, John B. Laidley, one of the defendants named in the above answer, and made oath that the facts and allegations therein contained are true.

Given under my hand this 9th day of March, 1892.

GEO. F. RATLIFF,
United States Commissioner for the District of West Virginia.

EXHIBIT No. 1.

(The above-mentioned exhibit is not now found among the papers of said office, but is copied as Exhibit A with amended bill of complaint.—Clerk.)

EXHIBIT No. 2.

60 (The above-mentioned exhibit is not now found among the papers of this office.—Clerk.)

EXHIBIT No. 3.

(The above-mentioned exhibit is not now found among the papers of this office.—Clerk.)

EXHIBIT No. 4.

(The above-mentioned exhibit is not now found among the papers of this office.—Clerk.)

And at another day, to wit, on the 2nd day of April, 1892, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Receiver,
vs.
JOHN B. LAIDLEY ET AL. } In Equity.

This day came John B. Laidley, W. S. Laidley, trustee; C. W. Campbell, and J. E. Erwin and tendered their answer to the bill of complaint filed herein against them by C. P. Huntington, special receiver of the Central Land Company of West Virginia; and the same, being inspected by the court, is ordered to be filed.

Plea & Answer of J. B. Laidley et al.

(The above-mentioned plea and answer of J. B. Laidley *et al.* is not now found among the papers of this office.—Clerk.)

And at another day, to wit, on the 26th day of January, 1894, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, as Special Receiver of the Central Land Company, Plaintiff,
vs.
JOHN B. LAIDLEY ET AL. } In Equity.

61 This day came the plaintiff, by Simms & Enslow and George C. Sturgiss, counsel, and tendered to the court the petition asking leave to file an amended bill, and the court, having seen and inspected said petition, orders the same to be, and it is, filed.

And in consideration of the facts set out in said petition and of the affidavit filed therewith of George C. Sturgiss, of counsel, the court is of opinion that the petitioner (plaintiff) is entitled to file said amended bill; it is therefore ordered that the said bill be, and the same is, filed, and said amended bill so filed alleging new matter and making new parties, it is ordered that this cause be remanded to rules, with directions to the clerk to issue the proper process against the defendants therein.

Petition of C. P. Huntington.

(Filed Jan'y 26th, 1894.)

UNITED STATES OF AMERICA, }
District of West Virginia. }

In the Circuit Court Thereof.

C. P. HUNTINGTON, Special Receiver of the Central Land Company, Plaintiff,
vs.
JOHN B. LAIDLEY ET AL., Defendants. } In Equity.

The petition of C. P. Huntington, as special receiver, filed in above case.

Your petitioner would most respectfully represent that heretofore he filed his original bill in the above suit, on which proceedings were had as resulted in the defendants, John B. Laidley, C. W. Campbell, and others, part of the defendants in said suit, filing an answer to said bill; that after the filing of the said bill with new parties be filed, and says that in asking to file said amended bill the motion is not made for the purpose of vexation or delay, but the same is made in good faith, and that the matter of the proposed amendment is material, and could not with reasonable diligence have been introduced in the original bill.

62 Your petitioner files herewith the affidavit of George C. Sturgiss, of counsel in said cause, showing that the leave to file the bill is not asked for the purpose of delay; which affidavit is made a part of this petition and prayed to be read therewith.

In consideration of the premises, your petitioner therefore prays that he may be allowed to file said amended bill and make the new parties necessary to have the matters in the said amended bill fully adjudicated and settled, and that such further proceedings may be had thereunder as justice in equity and the rules of the court require.

C. P. HUNTINGTON,
Special Receiver,
By COUNSEL.

G. C. STURGISS.
SIMMS & ENSLOW.

Affidavit of George C. Sturgiss.

(Filed Jan'y 26th, 1894.)

UNITED STATES OF AMERICA, *District of West Virginia,* } *To wit:*

This day came George C. Sturgiss, of counsel for C. P. Huntington, as special receiver of the Central Land Company, or plaintiff, against Jno. B. Laidley *et al.*, in equity, pending in the circuit court of the United States for the district of West Virginia, at Parkersburg, and made oath before me, L. B. Dellicker, clerk of said court, in my office, th-t the amended bill of complaint which the plaintiff will this day move said court for leave to file in said cause is not offered for filing, and said motion for leave to file is not made for the purpose of vexation or delay, but the same is made in good faith, and that the matter *if* the proposed amendment is material and could not with reasonable diligence have been sooner introduced into the bill.

GEO. C. STURGISS.

Sworn to and subscribed before me this 25th day of January, 1894.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

63 *Amended Bill of Complaint.*

(Filed January 26, 1894.)

United States Circuit Court, District of West Virginia.

COLLIS P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia, Complainant,

against

JOHN B. LAIDLEY, W. S. LAIDLEY, THOMAS J. BRYAN, JAMES F. Brown, Mary E. Chilton, William E. Chilton, C. W. Campbell, William Dusty, F. L. Doolittle, R. A. Goodwin, P. Frazier, Edward S. Doolittle, George F. Donnella, James Prichard, C. E. Gwinn, O. E. Gwinn, W. W. Gwinn, W. R. Gunn, Rufus Switzer, Lillie Hanley, Garland Buffington, W. H. H. H. Holswade, George H. Kyle, L. D. Isbell, C. W. Dillon, J. S. Marcum, A. L. Williams, S. R. Hall, Oscar Jones, Miriam Laidley, B. L. Miles, Thomas Miles, Lizzie Montgomery, M. M. Morrison, George E. McDonald, James K. Oney, Gordon O'Bierne, Charles Rose, John Riggs, J. D. Terrell, John T. Wilson, N. Smith, Martha A. Wellman, Sarah H. G. Pennybacker, Thomas H. Harvey, R. T. Harvey, Shelby J. Love, I. Myers, R. K. Price, J. L. M. Curry, Susan A. Remely, C. F. Remely, Michael O'Brien, John

O'Brien, James Jasper, Jackson Jasper, George W. Knapp,
64 Margaret Sands, Katherine A. Kneff, Henry Clay Greenwell, William Remeley, Henry Hartman, Wayne Ferguson, All Citizens and Residents of the District and State of West Virginia; E. M. Mitchell, Fannie E. Pennybacker, A. P. Mitchell, and Samuel Mitchell, the Heirs of E. T. Mitchell, Deceased, All Citizens and Residents of the State of West Virginia, Except Samuel Mitchell, who is a Citizen and Resident of the State of Idaho; George Noble, Ann Burns, Calla Smith, Victoria Morse, Alexander Smith, Jobe Smith, Maggie Smith, Lucinda Norris, and —— Smith, whose First Name is Unknown, the Heirs of J. M. Noble, Deceased, Citizens and Residents of the State of Ohio; the Unknown Heirs of B. Johnson, Deceased; J. E. Irwin, a Citizen and Resident of the State of Tennessee; Vesta Laidley, a Citizen and Resident of the State of California; Lou Ann Jobe, William R. Jobe, Thomas Jobe, Mary A. Jobe, Carlos Jobe, Hattie Jobe, an Infant of the Age of Sixteen Years, the Heirs of Samuel F. Jobe, Deceased, All Citizens and Residents of the State of West Virginia; J. L. M. Curry, a Citizen and Resident of the State of Virginia; Sarah E. Erwin, a Citizen and Resident of the State of Tennessee, and The Chesapeake and Ohio Railway Company, a Corporation Organized & Existing under & by Virtue of the Laws of the State of West Virginia and a Citizen of the State of West Virginia.

To the honorable the judges of the circuit court of the United States within and for the district of West Virginia:

The complainant Collis P. Huntington, a citizen and resident of the State of New York, and the special receiver of the Cen-
65 tral Land Company of West Virginia, having heretofore brought his bill of complaint in this court as such receiver against John B. Laidley, W. S. Laidley, C. W. Campbell, Vesta Laidley, J. E. Erwin, R. T. Harvey, Jackson Jasper, James Jasper, A. L. Williams, S. R. Hall, William Duster, C. F. Remely, Susan A. Remely, S. J. Love, I. Myers, Michael O'Brien, J. L. M. Curry, the unknown heirs of Samuel F. Jobe, deceased, Henry Clay Greenwell, Katherine Kneff, Margaret Sands, Charles Rose, the unknown heirs of E. T. Mitchell, deceased, and the unknown heirs of J. M. Noble, deceased, and having obtained permission from this honorable court to amend said bill of complaint, doth now bring this his amended bill of complaint against the parties above set forth in the title to this bill, and, humbly complaining, says:

That heretofore, and on or about the 18th day of August, 1865, as your complainant is informed and verily believes, one Rebecca J. Everett was the owner and seized in fee-simple of a tract of land situate, lying and being in the county of Cabell, State of West Virginia, on the Ohio river, about three miles below the mouth of the Guyandotte river, containing two hundred and forty (240) acres, more or less, being a part of the lands of Isaac Frampton, Jr., deceased, and known as lot No. 4, in the partition of the estate of said Isaac Frampton, Jr.; and that, being so seized, she, the said Rebecca J. Everett, by deed dated the 18th day of August, 1865, sold and

conveyed, for the sum of eight thousand dollars ($8,000) the said tract of land of two hundred and forty (240) acres, to the defendant Sarah H. G. Pennybacker, who was then and there a married woman, and held and owned the same in her own right, as her sole and separate property, and free from the control and debts of her husband, John M. Pennybacker, to which deed reference is hereby made, and a copy of which is hereto annexed and made a part hereof, marked "Exhibit A." That, thereafter, and on or about the 25th day of February, 1870, before any railroad had been built from Richmond, Virginia, to the point on the Ohio river where
66 the city of Huntington now stands, and before any city had been built where said city of Huntington now stands, and while said tract of two hundred and forty (240) acres was only available and used as ordinary farm lands, the said Sarah H. G. Pennybacker (her husband John M. Pennybacker joining in the deed as was required by the laws of West Virginia then in force upon the conveyance by a married woman of real estate which was her sole and separate property) for the sum of eleven thousand dollars ($11,000) cash, sold and conveyed to this complainant, in his individual capacity, by deed dated the 25th day of February, 1870, and duly recorded in the office of the recorder of Cabell county, West Virginia, being the proper office for the recording of deeds and titles to the lands in question, the said tract of two hundred and forty (240) acres, less one acre reserved, a copy of which deed is annexed hereto and made a part hereof, marked "Exhibit B." That shortly thereafter, and on or about the 15th day of April, 1870, Albert Laidley, who was the father of the defendant John B. Laidley, and then and there the attorney and confidential adviser of this complainant, and who had been employed by him to purchase said tract of two hundred and forty (240) acres of land, less one acre reserved, and to examine and pass upon the title to said land, and to prepare and approve of the deed conveying the same to this complainant, and Vesta Laidley, his wife, the mother of said John B. Laidley, sold and conveyed by a deed dated upon said last-named day, and duly recorded in the office of the recorder of Cabell county, West Virginia, being the proper office for the recording of deeds and titles to the lands in question, a copy of which is hereto annexed and made a part hereof, marked "Exhibit C," all their right, title and interest in and to said two hundred and forty (240) acres of land, less the one acre reserved, as aforesaid, to your complainant herein, in his individual capacity. That, thereafter, this complainant, in his individual capacity, by deed dated the 16th day of October, 1871, and duly recorded
67 in the office of the recorder of Cabell county, West Virginia, being the proper office for the recording of deeds and titles to the lands in question, a copy of which is annexed hereto and made a part hereof, marked "Exhibit D," sold and conveyed said tract of two hundred and forty (240) acres, less the one acre reserved, as aforesaid, to the Central Land Company of West Virginia, a corporation duly created and organized under and existing by virtue of the laws of the State of West Virginia.

That afterwards, and on or about the 16th day of December, 1890, in the suit in equity of Collis P. Huntington *et al.* against The Central Land Company of West Virginia, then pending in the United States circuit court for the district of West Virginia, your complainant was duly appointed special receiver of the said Central Land Company to take possession of the property of said company, and was, as such receiver, especially directed to take possession of the said two hundred and forty (240) acres of land, less the one acre reserved, as aforesaid, mentioned and referred to in the several deeds and conveyances above set forth, and to hold the same as the receiver of the said circuit court of the United States, as will more fully and at large appear from the decree in the said suit of Collis P. Huntington *et al.* against The Central Land Company of West Virginia, a copy of which is annexed hereto and made a part hereof, marked "Exhibit E."

And this complainant now says that immediately after the execution of the deed above mentioned and referred to, dated the 25th day of February, 1870, from Sarah H. G. Pennybacker and her husband, John M. Pennybacker, to himself, of the said two hundred and forty (240) acres, less the one acre reserved, as aforesaid, he took actual possession of said tract of two hundred and forty (240) acres of land, less the one acre reserved, as aforesaid, so conveyed
68 to him, and held the same in actual, open, adverse and exclusive possession, until the date of the deed to him of the said two hundred and forty (240) acres of land, less the one acre reserved, as aforesaid, from Albert Laidley and Vesta Laidley, his wife, the parents of the defendant John B. Laidley—to wit, the 15th day of April, 1870—from and after which last-named day this complainant held and claimed said two hundred and forty (240) acres of land, less the one acre reserved, as aforesaid, under and by virtue of both said deeds last above mentioned and referred to, and such holding and claim was actual, open, adverse and exclusive up to and until the date of the conveyance of said land by this complainant to the Central Land Company of West Virginia, by the deed dated October 16th, 1871 (Ex. "D"), and this complainant paid all the taxes charged and chargeable on said land from the date when he entered into possession thereof, up to and until the date of the conveyance by him thereof to the said Central Land Company.

This complainant further represents that, at the date of the deed last mentioned, the said Central Land Company took immediate, open, actual and adverse possession of the said tract of two hundred and forty (240) acres, less the one acre reserved, as aforesaid, and held and claimed the said land under the deed so executed to it by this complainant (Ex. "D") and under and by virtue of the deeds thereof to this complainant from Sarah H. G. Pennybacker and John M. Pennybacker, her husband, and from Albert Laidley and Vesta Laidley, his wife, the parents of the defendant John B. Laidley (Exs. "B" and "C") and paid all taxes charged and chargeable thereon, except so far as it has sold and conveyed parts and parcels thereof to others, as is hereinafter set forth, up to and until the date

of the appointment of this complainant as the receiver of said Central Land Company, to wit, the 16th of December, 1890.

And this complainant states and avers that the said Central Land Company having purchased several thousands of
69 acres of land, surrounding, adjoining and in the immediate vicinity of said tract of two hundred and forty (240) acres, less the one acre reserved, as aforesaid, caused said land, including the said tract of two hundred and forty (240) acres, less the one acre reserved, as aforesaid, to be laid off into town lots, blocks, avenues, streets and alleys, and by its agents had had the "city of Huntington" incorporated under the laws of West Virginia with its site upon said land including the said tract of two hundred and forty (240) acres, less one acre reserved, as aforesaid. That thereafter the said Central Land Company offered said lots for sale and sold very many thereof, and a prosperous city was founded upon said land of more than fifteen thousand inhabitants, and that of said tract of two hundred and forty (240) acres, less one acre reserved as aforesaid, there have been sold, as your complainant is informed and verily believes, twenty-two (22) lots by the said Central Land Company, to various persons, who have built upon said lots and erected thereon various and divers improvements, and had so built upon the same at the time and date of the deed from Sarah H. G. Pennybacker to John B. Laidley, hereinafter mentioned and referred to (Ex. F), to wit, the 26th day of January, 1882, and that, in addition thereto, two rights of way over said tract of two hundred and forty (240) acres, less one acre reserved as aforesaid, were granted and conveyed by the said Central Land Company to the Chesapeake and Ohio Railway Company, one near the centre of said tract of land and one on the Ohio River front thereof, and that said railway company built its railway across said tract of land at both of the places mentioned; that the deeds from the said Central Land Company to the various persons who purchased the said twenty-two (22) lots of land were deeds of general warranty and were duly recorded in the office of the clerk of the county court of Cabell county, West Virginia, being the proper office for the recording of deeds and titles to the lands in question. That the said twenty-two (22) lots, and the present owners thereof, as this complainant is informed and verily believes, are as follows:

70 Block 67.

Lot 1. Thomas H. and R. T. Harvey.
" 4. R. T. Harvey.
" 8 & 9. Shelby J. Love.
" 10. George Noble, Ann Burns, Calla Smith, Victoria Morse, Alexander Smith, John Smith, Maggie Smith, Lucinda Norris and —— Smith, whose first name is unknown, heirs of J. M. Noble, deceased.
" 11. R. K. Price.
" 13 & 14. Mrs. E. M. Mitchell, Mrs. Fannie E. Pennybacker, A. P. Mitchell and Samuel Mitchell, heirs of E. T. Mitchell, deceased.

Lot- 15 & 16. George Noble, Ann Burns, Calla Smith, Victoria Morse, Alexander Smith, John Smith, Maggie Smith, Lucinda Norris and —— Smith, whose first name is unknown, heirs of J. M. Noble, deceased.
" 18. J. L. M. Curry.

Block 68.

Lot 4. Michael and John O'Brien.
" 5. Jasper Jackson.
" 6. George W. Knapp.
" 7. Margaret Sands.
" 8 & 9. Katharine A. Kneff.
" 10. Henry Clay Greenwell.
" 11. William Remele.
" 12. Henry Hartman.
" 13 & 14. Wayne Ferguson.

And this complainant avers that at and during the time of the sale of said twenty-two (22) lots and of the right of way to the Chesapeake and Ohio Railway Company by the said Central Land Company, and, in fact, ever since the sale by said Sarah H. G. Pennybacker, to this complainant, of said tract of two hun-
71 dred and forty (240) acres of land, less the one acre reserved, as aforesaid, and until the date of her deed to the defendant, John B. Laidley, and while the purchasers of said lots were erecting thereon valuable dwelling-houses and other important and extensive improvements, and the line of the Chesapeake and Ohio railroad was being built upon said tract of land, the said Sarah H. G. Pennybacker was, as your orator is informed and verily believes, living in the very heart of said city of Huntington, or in its immediate vicinity, about one block and a half from the land in controversy and in the midst of the improvements and buildings which were being erected upon said tract of land, and had notice and knew and was well aware that the parties who were so buying and building upon said tract of land had bought said land and were building thereon in the faith and in the full belief and understanding that they had bought and were the owners of the fee-simple of the lots so purchased by them.

This complainant now says that on the 26th day of January, 1882, the said tract of two hundred and forty (240) acres, less one acre reserved as aforesaid, being then in the possession of the said Central Land Company and its grantees aforesaid, and after the death of said John M. Pennybacker, the husband of Sarah H. G. Pennybacker, the defendant John B. Laidley, having full and complete knowledge of the facts above set forth, and having notice of the sale of the said tract of two hundred and forty (240) acres, less the one acre reserved as aforesaid by Sarah H. G. Pennybacker and John M. Pennybacker, her husband, to this complainant, and of the deed from his father and mother Albert Laidley and wife to this complainant, and of the sale by him of said land to the said Central Land Company, and of the sale by said Central Land Company of

said rights of way and of said twenty-two (22) lots of said tract of land, and with full information and knowledge as to the claim of the said Central Land Company to and its possession of said
72 tract of land, and the possession of that portion of said tract of land held by the said grantees of said Central Land Company and those claiming under them, and as to the further facts that the said company and its subsequent grantees had purchased and paid for said land, had built and erected thereon valuable and costly improvements, and supposed and considered that they were, as was the fact, the owners in fee-simple thereof, and were so considered and treated by the said Sarah H. G. Pennybacker, obtained and procured from the said Sarah H. G. Pennybacker, as your complainant is informed and verily believes, a deed conveying said tract of two hundred and forty (240) acres of land, less the one acre reserved, as aforesaid, to him, the said John B. Laidley, in consideration of the sum of five hundred dollars ($500), to be paid to her by the said John B. Laidley, a copy of which deed is hereto annexed and made a part hereof, marked "Ex. F."

This complainant further states and avers, upon information and belief, that the said John B. Laidley was, at the date of the said deed (Ex. "F") to him from Sarah H. G. Pennybacker—viz., the 26th day of January, 1882—and for very many years prior thereto, a practicing attorney in the courts of said county of Cabell, West Virginia, and as such practicing attorney had full and free access to the records of said county, and that, as this complainant has learned since the filing of his original bill, as this complainant is informed and verily believes, and charges to be true, the said John B. Laidley, after the death of his father, Albert Laidley, which occurred on the 7th day of December, 1876, made a thorough and careful search of the records in the office of the clerk of the county court of said Cabell county, for the purpose of verifying his recollection as to the deeds and the acknowledgments attached thereto, which were prepared by his father and by him at and during the time he was engaged and employed in the office of his father, the said Albert Laidley, and as to the alleged defects known by him to be contained in the deeds and conveyances made by his father, Albert Laidley, to this complainant, and
73 those made by the direction of his father to this complainant, of the lands purchased and bought by his said father under and in pursuance of the employment of said Albert Laidley, by this complainant as above set forth, and that in this search he, the said John B. Laidley, verified and confirmed his remembrance and recollection that the certificate of acknowledgment of the said deed from Sarah H. G. Pennybacker, to this complainant, dated the 25th day of February, 1870, was, as he considered and supposed, defective and invalid, and not sufficient to convey to this complainant the title of the said Sarah H. G. Pennybacker to the land embraced and referred to in the deed to which said certificate of acknowledgment was attached, and that said John B. Laidley thereupon conceived the plan and idea of obtaining a large fee from the said Sarah H. G. Pennybacker, and in pursuance of and

for the purpose of carrying out said plan and idea, and while the said Sarah H. G. Pennybacker was entirely and absolutely ignorant of any defect in the acknowledgment of said deed last above referred to, and was perfectly satisfied with the conveyance and sale of said tract of land to this complainant, and with the amount of money which she had received therefor, and felt and considered that she had disposed of and conveyed by her said deed (Ex. "B") all her right, title, and interest in and to said tract of land, and that there was no claim or title in law or equity in and to and in respect to said tract of land in her remaining, he, the said John B. Laidley, voluntarily, without solicitation and of his own motion, approached said Sarah H. G. Pennybacker, with whom he was then and there unacquainted, and endeavored to induce her to commence a suit against the then owners of said tract of two hundred and forty (240) acres of land, less the one acre reserved as aforesaid, for the purpose of recovering her dower in the same, informing her that under the "new constitution of West Virginia" she had a
74 dower interest therein, and that if she would authorize him to bring a suit in her name he would do so, and that if a recovery was had they would divide the proceeds thereof equally, and that if no recovery was had she, the said Sarah H. G. Pennybacker, should pay him for his services; that the said John B. Laidley at the same time exacted from the said Sarah H. G. Pennybacker a promise, upon her "honor as a lady," that she would not consult any attorney in regard to the matters stated by him to her.

That, as your complainant is informed and verily believes, the said Sarah H. G. Pennybacker thereupon stated to the said John B. Laidley that she had sold the said tract of two hundred and forty (240) acres of land, less the one acre reserved as aforesaid, to this complainant; that she had been paid therefor, and that she did not see how she could have any dower interest in her own land which she had sold and for which she had received the full amount she had asked therefor, and to this the said John B. Laidley replied that it was by virtue of the "new constitution of West Virginia."

That the said Sarah H. G. Pennybacker thereupon, as this complainant has learned since the filing of his original bill & as your orator is informed and verily believes, asked the said John B. Laidley if his father, the said Albert Laidley knew that she had any dower in said land, to which the said John B. Laidley replied that his father did know of it all the time, and upon the said Sarah H. G. Pennybacker asking the said John B. Laidley why his father had not told her of the fact at the time of the execution of said deed ("Exhibit B") or at some time prior or subsequent thereto, he replied that his father would have told her if he had lived, meaning that he, the said Albert Laidley, expected to do so upon the death of her husband, John M. Pennybacker; that the said Sarah H. G. Pennybacker thereupon asked the said John B. Laidley if he had been told and informed of this fact by his father, to which the said John B. Laidley replied, "Why do you ask me these questions?" and laughed, and then said, "What difference does it make to you whether he

75 did or not?" and any other or further answer to her said question last above stated he, the said John B. Laidley, refused to make.

This complainant avers, upon information and belief, that the said Sarah H. G. Pennybacker then and there refused to permit the said John B. Laidley to bring any suit or suits to recover her dower interest in said tract of land, for the reason that, among other things, she was poor and needy and unable to bear the expense of litigation. That the said John B. Laidley had various interviews with the said Sarah H. G. Pennybacker, and, on finding that he would be unable to induce her to bring the suits as suggested by him he offered her the sum of five hundred dollars ($500) if she would convey said tract of two hundred and forty (240) acres of land less the one acre reserved to him, not telling her that the acknowledgment in her deed to this complainant (Ex. "B") was defective, but insisting that she was entitled to her dower in said tract of land by reason of the "new constitution of West Virginia."

That the said Sarah H. G. Pennybacker consulted with no lawyer as to what course she should pursue in the matter, feeling bound by her promise to said John B. Laidley on her "honor as a lady" not so to do, but did consult with various and divers of her friends, who were inexperienced in such matters and unfamiliar with the forms of law: that her friends with whom she advised as aforesaid told her that in their judgment she had no interest in said land to sell, and that if said John B. Laidley would give her $500 for her dower interest in said land that she would in their opinion be getting something for nothing, and that she had better take the same.

That the said Sarah H. G. Pennybacker, being restrained and prevented from obtaining legal advice by the said John B. Laidley as aforesaid, and being an inexperienced woman, who had always relied upon the advice of her husband, who had died just prior thereto, in the month of July, 1881, followed the advice of
76 friends who had little more experience than herself in matters of business and in the forms of law, and sold and conveyed by said deed dated the 26th day of January, 1882 ("Ex. F"), to the said John B. Laidley, for the clearly inadequate and insignificant sum of five hundred dollars ($500), (if she was still the owner in fee of said land), the said tract of two hundred and forty (240) acres of land, less the one acre reserved as aforesaid, said land being at that time of the value of over one hundred thousand dollars ($100,000).

That of said sum of five hundred dollars ($500) the said John B. Laidley paid, as your orator is informed and verily believes, to said Sarah H. G. Pennybacker, one hundred dollars ($100) in cash, and gave his note for the balance thereof, which balance of $400 the said Sarah H. G. Pennybacker was never able to collect from said John B. Laidley, with the exception of a few dollars thereof, and, in order to realize anything from said note, she was forced and obliged to sell the same at a heavy discount, and that all she ever realized from said sale and conveyance, as this complainant is informed and verily believes, was $325, while said tract of land was worth, at that time, as above stated, over $100,000.

This complainant further alleges and avers, upon information and belief, that the said Sarah H. G. Pennybacker, in the month of July, 1872, commenced a suit in chancery against John M. Pennybacker, her husband, and others, in the circuit court of Cabell county, West Virginia, and that the said Sarah H. G. Pennybacker, in the sworn bill of complaint in said suit, a copy of which is hereto annexed and made a part hereof (marked "Ex. G") set up her sale and conveyance of the said tract of two hundred and forty (240) acres, less the one acre reserved, of land in question, to this complainant, on the payment to her of the purchase-money therefor, and claimed the same and the proceeds of the sale of the same as her sole and separate property, and that she held the same in
77 her own right and free from the debts or control of her husband and her right thereto, as claimed in said bill, was maintained and upheld by the judgment and decree of the said court, in said suit in chancery, a copy of which is hereto annexed and made a part hereof (Ex. "H"), whereby the said tract of two hundred and forty (240) acres of land, less the one acre reserved as aforesaid, and the proceeds of sale of same, and the investment of same, was held and adjudged to be the sole, separate and individual property of said Sarah H. G. Pennybacker.

And this complainant further says, upon information and belief, that thereafter and on the 20th day of February, 1874, by a deed dated on said day, the said Sarah H. G. Pennybacker sold and conveyed to one Warren J. Parsons the one acre of land reserved by the said Sarah H. G. Pennybacker in her deed to this complainant, dated the 25th day of February, 1870 (Ex. "B"), and that the said Sarah H. G. Pennybacker, in said deed to said Parsons, of the 20th day of February, 1874, a copy of which, marked "Ex. I," is hereto annexed and made a part hereof, referred to, recognized and ratified her prior deed to this complainant, dated the 25th day of February, 1870 (Ex. "B").

This complainant now says and avers that, as he is advised by his counsel and verily believes to be true, at the time of the conveyance by the said Sarah H. G. Pennybacker, of the tract of two hundred and forty (240) acres of land in question, less the one acre reserved as aforesaid, to said John B. Laidley, viz: the 26th day of January, 1882, the said Sarah H. G. Pennybacker, by reason of her having received, used and disposed of the proceeds of said property, sold by her to this complainant, and because she had, without opposition, complaint or protest, stood by and permitted various lots in said tract of land to be sold, and valuable improvements to be erected thereon, could not (even if she had failed to convey and to divest herself of any or all of her right, title or interest in and to said tract of land by her said deed to this complainant, dated February 25th, 1870 (Ex. "B")), herself and in her own right, have set up in equity any claim to said
78 tract of land, on account of the defective execution of her said deed (Ex. "B") to this complainant, but that she would in equity have been estopped from asserting any right, title, claim or interest thereto, and the said John B. Laidley, being a purchaser,

with full notice of all the facts connected with the sale of said land, and of the subsequent conduct and action of said Sarah H. G. Pennybacker, cannot, and did not, acquire and obtain, by the purchase of said tract of land from said Sarah H. G. Pennybacker, any right, title, claim or interest, other, greater or more than his vendor had at the time of his purchase, and cannot assert any right, title, claim or interest in and to, and in respect to, said land, which could not be asserted by his vendor, Sarah H. G. Pennybacker, and is, consequently, estopped in equity from asserting any right, title, claim or interest of any kind, character, nature or description in and to, and in respect to, said tract of land, which land this complainant alleges said John B. Laidley purchased and bought for the purpose of cheating and defrauding the said Central Land Company and its grantees, and those holding under them, out of property to which they are legally and equitably entitled; but, not regarding the facts just hereinbefore set forth, the said John B. Laidley, and those claiming under him, for the purpose of asserting their right and title in and to the possession of said lands and lots, claim and set up that the said Sarah H. G. Pennybacker was not estopped in equity by reason of her acts in regard to said tract of land, and because she had received and disposed of the money which had been paid to her therefor, from asserting any right, title or interest in and to, and in respect to, said tract of land, and that they, therefore, holding their title to said land through and under the said Sarah H. G. Pennybacker, are not themselves estopped from asserting a right and title to said tract of land, and they thereby, and by such claim and assertion of title to said tract of land, impair the rights
79 of the said Central Land Company and those holding under and through said land company, to said tract of land, invested in them under and by said deed of February 25th, 1870 (Exhibit B) and intermediate conveyances and raise a cloud upon their title thereto.

This complainant further alleges and avers that, as he is advised by his counsel and verily believes to be true, upon said 26th day of January, 1882, the said Sarah H. G. Pennybacker, by reason of her statements above referred to, contained in the sworn bill of complaint (Exhibit G) in the chancery suit brought by her against John M. Pennybacker, her husband, and others—viz., that she held and owned the said tract of two hundred and forty (240) acres of land in question in her own right and free from the debts or control of her husband, and that she had sold the same to this complainant, which said statements were made two years after the deed from her to this complainant—could not herself, and in her own right, have set up in equity any right, title, claim or interest in and to and in respect to said tract of land on account of the defective execution of her said deed (Exhibit B) to this complainant, but that she would in equity have been estopped from asserting any right, title, claim or interest therein of any kind, character, nature or description whatever, and that the said John B Laidley, by reason of his purchase of said tract of land from said Sarah H. G. Pennybacker on the 26th day of January, 1882, has not acquired any right, title,

claim or interest in and to and in respect to said tract of land different from, or other, or greater than, his vendor, Sarah H. G. Pennybacker, had at the time of his purchase from her of said land, and cannot assert any right, title, claim or interest in and to and in respect to said tract of land which could not be asserted by his vendor, Sarah H. G. Pennybacker, and is consequently estopped in equity from asserting any right, title, claim or interest of any kind, character or description whatsoever, in and to said tract of land; but not regarding the facts just hereinbefore set forth, the said John B. Laidley and those claiming under him for the purpose of
80 asserting their alleged right and title to the possession of said lands and lots, claim and set up that the said Sarah H. G. Pennybacker was not estopped in equity from asserting any right, title or interest in said tract of land by reason of her said statements above mentioned and referred to made in said sworn bill of complaint (Ex. "G") and that they, therefore, holding their title to said land through and under the said Sarah H. G. Pennybacker, are not themselves estopped from asserting a right and title to said tract of land and they thereby and by such claim and assertion of title to said tract of land impair the rights of the said Central Land Company, and those holding under and through said land company, to said tract of land, invested in them under and by said deed of February 25th, 1870 ("Exhibit B"), and intermediate conveyances, and raise a cloud upon their title thereto.

And this complainant further says and avers that at the time of the conveyance by the said Sarah H. G. Pennybacker of the said tract of two hundred and forty (240) acres of land in question to John B. Laidley, viz., the 26th day of January, 1882, the said Sarah H. G. Pennybacker, by reason of the prior recognition by her of her deed to this complainant ("Exhibit B") in the deed given by her to one Warren J. Parsons ("Exhibit I"), could not, as this complainant is advised by his counsel and verily believes to be true, herself and in her own right have set up in equity any right, title, claim or interest in and to said tract of land on account of the defective execution and acknowledgment of her said deed ("Exhibit B") to this complainant, but that she would in equity have been estopped from asserting any right, title, claim and interest of any kind, character or nature whatsoever in and to and in respect to said tract of land, and that the said John B. Laidley, by reason and because of his purchase of said tract of land from said Sarah H. G. Pennybacker, on the 26th day of January, 1882, has not acquired any right, title, claim or interest in or to or in respect to said tract of land different from or other or greater than
81 his vendor, Sarah H. G. Pennybacker, had at the time of his purchase from her of said land, and cannot assert any right, title, claim or interest in and to and in respect to said tract of land, which could not be asserted by his vendor, Sarah H. G. Pennybacker, and is consequently estopped in equity from asserting any right, title, claim or interest of any kind, character or nature whatsoever, in and to and in respect to said tract of land; but not regarding the facts just hereinbefore set forth, the said John B. Laid-

ley and those claiming under him, for the purpose of asserting their right and title to the possession of said lands and lots, claim and set up that the said Sarah H. G. Pennybacker was not estopped in equity from asserting any right, title or interest in and to said tract of land, by reason of her said deed to Warren J. Parsons (Ex. "I") and the ratification contained therein of her said deed to this complainant (Ex. "B"), and that they, therefore, holding their title to said land through and under the said Sarah H. G. Pennybacker, are not themselves estopped from asserting a right and title to said tract of land, and they thereby, and by such claim and assertion, of title to said tract of land, impair the rights of the said Central Land Company, and of those holding under and through said land company, to said tract of land invested in them by said deed of February 25th, 1870 (Ex. "B"), and intermediate conveyances, and raise a cloud upon their title thereto.

And this complainant further states and avers that he, the said C. P. Huntington, in his individual capacity, for a long time prior to the 25th day of February, 1870, as well as for some time thereafter, employed Albert Laidley, the father of the defendant John B. Laidley, as his confidential agent and attorney, to purchase for him divers and sundry tracts of land at and in the vicinity of what is now the city of Huntington, in the district of West Virginia, including the two hundred and forty acres, less one acre reserved as aforesaid, conveyed to him by the deed dated the 25th day of February, 1870, by Sarah H. G. Pennybacker
82 and John M. Pennybacker, her husband (Ex. "B"), and charged the said Albert Laidley with the responsibility, as such confidential agent and attorney, of fully examining the titles to the several tracts of land bought for him by said Laidley, including the Pennybacker tract, and with the preparation of the deeds therefor, and with the duty of seeing that said deeds were duly and properly executed by the several grantors and vendors of said land, and that the proper certificates of acknowledgment to said deeds were attached thereto, and this complainant relied wholly upon the skill, judgment, integrity and professional learning of the said Albert Laidley in the negotiations for the purchase and in the examination of the titles to said lands, and in the preparation and due acknowledgment and execution of the deeds for the same, as well as in all other matters pertaining to the acquisition of good and lawful titles to the lands so purchased by him, as aforesaid, and for and in consideration of such services, paid to the said Albert Laidley, during the time of his employment and services, as aforesaid, which continued down to about the period of his death (which took place in the month of December, 1876, as this complainant is informed and believes) divers and large sums of money, in the full belief and confident expectation that the said services would be, and were, rendered in good faith, and with the exercise of a due and reasonable professional skill, learning and judgment; that among the titles so reported and examined by the said Albert Laidley, to and for the account of the complainant, was the title to the said tract of two hundred and forty (240) acres of land less one acre re-

served as aforesaid in controversy, which was conveyed to this complainant by the said Sarah H. G. Pennybacker and her husband, by deed prepared by, or under the supervision and direction of the said Albert Laidley, as complainant is informed and verily believes, and the certificate of acknowledgment thereof appended to the same, by which the said grantors acknowledged the execution of the said deed, was also prepared by,
83 or under the supervision and direction of the said Albert Laidley, acting as the confidential agent and attorney for this complainant, as complainant is informed and verily believes, and here charges as true, and for which land the said Huntington paid a full, fair and satisfactory consideration, in the full belief, understanding and expectation on his part that he was receiving and securing by said deed and acknowledgment a fee-simple title with general warranty, conveying to him all the interest which the said Sarah H. G. Pennybacker and her husband had in and to said land, and which the said grantors and each of them supposed and believed they were conveying, and intended and desired to convey, to his complainant, all of which the said Albert Laidley then and there well knew; that as this complainant has learned since the filing of his original bill at and during the time of the employment of the said Albert Laidley as aforesaid, and while he was so engaged as the confidential agent and attorney of this complainant, the defendant John B. Laidley was a member of the family of the said Albert Laidley, and had, out of the large and liberal payments made by this complainant to the said Albert Laidley (who was theretofore in very humble circumstances), been boarded, clothed, maintained, educated and supported by his said father, as the complainant is informed and verily believes; and for a portion, at least, of said time was a clerk and scrivener in his father's law office at the town of Barbersville, then the county-seat of Cabell county, West Virginia, in which county were situate the lands purchased for this complainant and conveyed to him through the agency and employment of the said Albert Laidley; and the said John B. Laidley as this complainant has learned since the filing of his original bill was, during a portion of that time, a student of law, under his father and a clerk in his said office, and at a later period of said time as this complainant has learned since the filing of his original bill was associated with him as partner, or jointly in the transaction of law business, in the examination of land titles and the execution of deeds and other legal documents, as complainant is informed and be-
84 lieves, and charges as true; and during a portion of said time, while not actually associated with said Albert Laidley, in the practice of law and transaction of business pertaining to the examination of titles and conveyancing, as this complainant has learned since the filing of his original bill, was an occupant of the same room or rooms with his father, and during another part of said time occupied part of a building and rooms in the same yard and enclosure in the little village of Barbersville in which his father had his office and home.

And as this complainant has learned since the filing of his original

bill, complainant is informed and verily believes and here charges as true that while so a member of the family of the said Albert Laidley, and in his service and employment as such clerk and scrivener, and while receiving instructions as such student of law in his father's office, and while associated with him in the practice of law, and in the preparation of deeds of conveyance, and of the certificates of acknowledgment thereof, and in the examination and investigation of the titles to lands, the said John B. Laidley had access to all the papers, deeds and abstracts relating to the titles to lands purchased by said Albert Laidley, for complainant, and conveyed to him and caused to be conveyed to him by the said Albert Laidley, including the said Pennybacker papers, deeds, abstracts and acknowledgments, and then and there and thereby learned and acquired, in a strictly confidential way and manner, knowledge and information of and from his said father, and from said papers, deeds, abstracts and acknowledgments so accessible and open to his examination, that the acknowledgment and execution of said deed from Sarah H. G. Pennybacker and her husband ("Ex. B") was defective, and that it might be claimed that it was void as to the said Sarah H. G. Pennybacker, and did not bind the said Sarah H. G. Pennybacker, in whom the fee-simple to the said land was vested, and did not pass to complainant any other or further or greater interest in said land than the husband's estate as tenant by the curtesy, by reason of a decision of the supreme court of appeals of the State of West Virginia, rendered after the execution of said deed, holding
85 and deciding that a somewhat similar certificate of acknowledgment was insufficient to constitute a due acknowledgment, and to bind the wife, which opinion and judgment of the supreme court of appeals of West Virginia, for the first time, in effect reversed all decisions of the supreme court of Virginia, which had theretofore always held, as it has ever since held, such and similar certificates of acknowledgments to be good, valid and sufficient to pass the estate in fee owned by the wife.

And complainant avers that by reason of the employment by him of the said Albert Laidley as a confidential agent and attorney, and of their relations to each other as aforesaid, and of the employment, associations, and confidential relations existing between the said John B. Laidley and the said Albert Laidley, as aforesaid, and as this complainant has learned since the filing of his original bill the knowledge and information acquired by the father and by the son in the manner and at the times aforesaid, it became and was the duty and obligation of each and both, the said father and son, to have at once advised and informed complainant of the said defective and void character of the deed from said Sarah H. G. Pennybacker, as to her interest in the land purporting to be conveyed thereby, and to have aided and assisted complainant in perfecting said title, and in curing said defective acknowledgment, and by all legitimate methods to have induced and persuaded the said Sarah H. G. Pennybacker to have confirmed and made good said deed by a proper acknowledgment, or a reacknowledgment of the same, instead of surreptitioutly persuading and inducing her, as the said

John B. Laidley did, to convey the said land to him, but they and each of them wholly failed to advise and inform complainant of said defective acknowledgment, or to aid complainant in curing said defect and imperfection in said title, but they and each of them wholly concealed the fact of said alleged defective acknowledgment from complainant, and from the Central Land Company (to which corporation the complainant had, in good faith and for a
86 valuable consideration, conveyed, by a deed of record, the said 240 acres of land in controversy, less the one acre reserved as aforesaid, Ex. "D"), although the said land company had its principal office and place of business at Huntington, in the county of Cabell, State of West Virginia, where the land was situated and where the said Albert Laidley and the said John B. Laidley resided.

That shortly after the death of the said John M. Pennybacker, which took place in the month of July, 1881, the said John B. Laidley, and divers other persons to the complainant unknown, combined, conspired and confederated together, as is hereinbefore set forth, to wrong, cheat and defraud this complainant, in his own right, and the said Central Land Company, and the divers other persons to whom the said land company had sold and conveyed lots and parcels of said two hundred and forty (240) acre tract of land, and those holding under them (who had taken possession of same and built upon and otherwise improved the same), and surrepti-ously caused and procured to be executed by the said Sarah H. G. Pennybacker for the grossly inadequate sum of $500 (if she was still the owner in fee of said land), a deed (Ex. "F"), purporting to convey to said John B. Laidley, in fee-simple, the whole of the two hundred and forty (240) acre tract, less the one acre reserved as aforesaid, which said land was worth at least, at that time, the sum of $100,000, as complainant is informed and believes and here charges as true, and had theretofore been sold to and paid for by this complainant, and the title to which said tract of land was intended by all parties to the deed of February 25th, 1870 (Ex. B), to be vested in this complainant by said deed (Ex. B).

Complainant further represents, upon information and belief, that at the time the said John B. Laidley persuaded and induced the said Sarah H. G. Pennybacker to execute to him the deed of January 26th, 1882, and as this complainant has learned since the filing of his original bill, the said John B. Laidley well knew and had learned in the course of his instructions and teachings
87 as a clerk in the office of his father, the said Albert Laidley, and by and through various conversations with his father in regard thereto that certificates of acknowledgment in substance and form, and to the effect of that set forth in the acknowledgment of Sarah H. G. Pennybacker to the deed of February 25th, 1870, had been held by the supreme court of the State of Virginia to be good and sufficient in law, and valid and binding acknowledgments by a *feme covert* grantor, and that this complainant, through the said Albert Laidley, had in good faith purchased said land and paid to the said Sarah H. G. Pennybacker a full, fair, adequate and satis-

factory compensation therefor, fully relying on the sufficiency of said certificate of acknowledgment to constitute the said writing of February 25th, 1870 ("Exhibit B") a valid deed, conveying the interest of the said Sarah H. G. Pennybacker.

And this complainant further says that, by reason of the premises and because of the confidential relations between this complainant and the said John B. Laidley theretofore existing, and which then existed at the time of the conveyance of said tract of two hundred and forty (240) acres of land, less one acre reserved, by said Sarah H. G. Pennybacker to this complainant, to wit, the 25th day of February, 1870, arising out of the fact that, at said time and for a considerable period prior thereto, as this complainant has learned since the filing of his original bill, the said John B. Laidley was employed as a clerk in the office of said Albert Laidley, who was then and there acting as the attorney and confidential adviser of this complainant, as above set forth, and for the further reason, as this complainant has learned since the filing of his original bill & as — believes and charges to be true, that the knowledge of the alleged defect in the acknowledgment of said deed ("Exhibit B") from Sarah H. G. Pennybacker and her husband to this complainant was attained and acquired by the said John B. Laidley from his father, and through and on account of his employment as a clerk in the office of his said father, Albert Laidley; and that because of his employment as such clerk, as this complainant has learned since the filing of his original bill, the said John B. Laidley was familiar
88 and well knew the manner and form in which the acknowledgement to the said deed of the said Sarah H. G. Pennybacker to this complainant (Ex. "B") was drawn, and that as this complainant has learned since the filing of his original bill such knowledge was gained by said John B. Laidley solely and entirely through, and because of his employment as such clerk in the office of his father, Albert Laidley, and not otherwise, and if it had not been for such employment as such clerk in the office of his father, the said Albert Laidley, he, the said John B. Laidley, as this complainant has learned since the filing of his original bill and as he verily believes would not have known or been cognizant of the alleged defect in said acknowledgment, and would not have searched through the records of the office of the clerk of the said county of Cabell, as above set forth, for the purpose of verifying and assuring himself of the accuracy and correctness of his memory and recollection as to said alleged defective acknowledgment, and would not have approached the said Sarah H. G. Pennybacker, and persuaded her to convey to him said tract of land, as aforesaid, and that, therefore, and because of all these matters and things, the said John B. Laidley could not himself, even if the said Sarah H. G. Pennybacker had had any right, title, claim or interest in said tract of two hundred and forty (240) acres of land, less one acre reserved as aforesaid, so conveyed by her to this complainant, on the 25th day of February, 1870, have asserted and set up in equity and justice any right, title, claim or interest in said tract of land, on account of the defective execution and acknowledgment by Sarah H. G.

Pennybacker of her said deed ("Exhibit B") to this complainant, but that the said John B. Laidley would in equity and good conscience have been estopped from asserting any right, title, claim and interest in and to and in respect to said tract of land, of any kind, character or nature whatsoever; but, not regarding the facts just hereinbefore set forth, the said John B. Laidley and those claiming under him, for the purpose of asserting their right and title to the possession of said lands and lots, claim and set up that the
89 said John B. Laidley was not estopped in equity by reason of the knowledge as to said defective acknowledgment acquired and gained by the said John B. Laidley in and through and because of his employment as a clerk in the office of his father as aforesaid, or on account of any of the other matters and things just hereinbefore set forth, from asserting a right and title to said tract of land, and they thereby, and by such claim and assertion of title to said tract of land, impair the rights of the said Central Land Company and those holding under and through said land company, to said tract of land, and raise a cloud upon their title thereto.

And this complainant further says and avers that the said Sarah H. G. Pennybacker, at the time of her deed to this complainant, of the said tract of land in question was the owner, in fee-simple, of said tract of land, and that the said land was her sole and separate property and that said question as to the character, description and nature of the right, title and interest of said Sarah H. G. Pennybacker, in and to and in respect to said tract of land, was judicially determined, as above set forth, in the suit brought by her against her husband, John M. Pennybacker, and others, in the county court of Cabell county, West Virginia, and this complainant states that if the said Sarah H. G. Pennybacker by her deed of the 25th day of February, 1870 (Ex. "B") failed to convey and divest herself of any of her right, title and interest in law in and to, and in respect to said tract of land, by reason of any alleged defect in the execution of said deed, and even if she had thereafter in her remaining any right, title or interest in law in and to, and in respect to, said tract of land, not conveyed by said deed of the 25th day of February, 1870 (Ex. "B"), by reason of the alleged defective acknowledgment attached thereto, she neglected and failed to assert said right, title and interest in and to, and in respect to said tract of land, or to make any entry upon said land or to bring any action to recover the same within ten years after the date of her said deed to this
90 complainant (Ex. "B"). That the laws of West Virginia at the time of the deed of Sarah H. G. Pennybacker and her husband to this complainant ("Ex. B") provided, and have ever since so provided, that a married woman shall not make an entry on or bring an action to recover any land which is her sole and separate property but within ten years next after the right to make the entry or bring the action has accrued. That the said Sarah H. G. Pennybacker was therefore barred and prevented by the laws of the State of West Virginia from ever asserting or claiming any right, title and interest in and to said tract of land at the time of her said deed to John B. Laidley (Ex. F), and that the said John B.

Laidley, being a purchaser with full notice of the facts, and being well aware that the time limited by the laws of the State of West Virginia for the assertion of any claim or the bringing of any action to recover said land by the said Sarah H. G. Pennybacker had expired, derived and obtained from his purchaser no other or further or greater right, title, claim or interest in and to and in respect to said tract of land than his vendor then had at the time of her sale to him of said tract of land, as aforesaid, and no right to make any entry upon said land nor to bring any action to recover the same, and was therefore barred and prevented by the statute of limitations of the State of West Virginia from asserting any right, title, claim or interest in and to and in respect to said land, and from making any entry upon said land or bringing any action to recover the same, as his vendor herself would have been.

That, after procuring said deed of January 26th, 1882 ("Exhibit F"), from Sarah H. G. Pennybacker, as aforesaid, said John B. Laidley undertook to set up and claim title to said tract of land, made a number of sales of parts of said land to various persons hereinafter set out, and sought to dispossess the said The Central Land Company, and those claiming under it. That said claim and setting up of said John B. Laidley's pretended title so obtained, and the sales made by him to a large number of persons, caused
91 and made such a cloud on the title of the said land company and those claiming under it, that said land company has not from that time been able to make any sales of any of said land, and your orator, as special receiver of this honorable court, as hereinbefore set out, has been vested with all the rights of the said land company, but has not been able to make any sales of the same, for the reason that said Laidley's claim prevents purchasers from buying said land by reason of the fact of said cloud being on the title thereto.

Your orator further alleges and charges that the said John B. Laidley is insolvent, as he is informed and believes; that he is threatening to take possession of the whole of said tract of land, including the lots sold, as aforesaid, and is seeking to compel the said lot-owners to pay him for the said lots bought of the said land company, and if he is allowed to take possession of said land, and of the lots sold, it will cause your orator, who is in possession, to lose the same, and cause him, and the owners of the said lots of land, irreparable loss and injury.

Your orator further represents that heretofore the said Central Land Company sued out and obtained from the circuit court of the United States in and for the district of West Virginia an injunction against the said John B. Laidley, preventing him from interfering with its possession of said land, all of which will more fully and at large appear from a copy of the bill and decrees awarding and continuing said injunction in said chancery suit of The Central Land Company of West Virginia against John B. Laidley, now pending in the said circuit court of the United States, filed herewith as a part of this amended bill, and marked "Exhibit K."

That, as is hereinbefore set forth, on the 16th day of December

1890, in the chancery suit of Collis P. Huntington and others against The Central Land Company, defendant, then pending in the United States circuit court for the district of West Virginia, your orator was appointed special receiver of the Central Land
92 Company, to take possession of the property of the Central Land Company of West Virginia, and as such receiver was specially directed to take possession of the said two hundred and forty (240) acres, less one acre reserved, in controversy between the Central Land Company and John B. Laidley, and to hold the same as receiver of said circuit court of the United States, as will appear from a copy of the decree in the said suit of Collis P. Huntington *et al.* against the said Central Land Company herewith filed, and marked "Exhibit E," and prayed to be read as a part of this amended bill.

That, acting under such order, your orator gave bond as such receiver in the penalty of two hundred thousand dollars ($200,000), and took actual possession of said tract of two hundred and forty (240) acres of land, less one acre reserved, on the said 16th day of December, 1890, and that, at the time your said special receiver took possession of the said tract, he permitted and left the said lots (sold out of the two hundred and forty (240) acre tract, less one acre reserved) in the possession of the said several parties who then owned the same, without taking actual possession from them, allowing them to hold the same under him as receiver, their possession being under him.

That under and by virtue of the injunction issued in the said chancery suit of The Central Land Company *vs.* John B. Laidley, as hereinbefore set out, the said Laidley was enjoined and prohibited from interfering in any manner with the possession of the said two hundred and forty (240) acres of land, less one acre reserved, or any part of the same.

That under and by virtue of the order appointing your orator special receiver, and his taking possession of the said tract of two hundred and forty (240) acres of land, less one acre reserved, of which the lots sold are a part, he is entitled to hold the same as an officer of the circuit court of the United States in and for the district of West Virginia until the right to the land and the entire question of the title thereto is determined.

93 That the said John B. Laidley, not being a party to the suit in which your orator was appointed receiver, has had no official notice of the fact that the whole tract of land is in possession of your orator, but has been informed of the fact, but not regarding the said injunction order in the case of the Central Land Company against John B. Laidley, in this court, which he claims does not apply to the lots sold, and not regarding the fact of your orator's possession as receiver of the two hundred and forty (240) acre tract, less the one acre reserved (now owned by M. E. Roffe), he, the said John B. Laidley, is now proceeding to set up a pretended claim against the several respective lot-owners who own and claim under and by virtue of the sales to them and their vendors by the Central Land Company, and threatens to dispossess them

from their said several lots, and denying the right of your orator as special receiver under the decree of this court, of December 16th, 1890 (" Exhibit E "), as aforesaid, claims he has the right to the possession of said lots, and that your orator, as special receiver, has not the right to the possession of the same.

Your orator further says that the claim of John B. Laidley is based upon the fact, as hereinbefore stated, that the deed (" Exhibit B ") of February 25th, 1870, from Sarah H. G. Pennybacker and her husband, to this complainant for the said tract of land, conveyed no title to this complainant, because of an alleged defect in its acknowledgment, and for no other cause, and that the deed of your orator to the Central Land Company (" Exhibit D "), for that reason alone, conveyed no title to the said company, and that he, the said John B. Laidley, claims direct from the said Sarah H. G. Pennybacker, who, after the death of her husband, attempted to convey the said property to him, the said John B. Laidley, which she had in the lifetime of her husband already conveyed by deed (" Exhibit B "), as aforesaid, to this complainant.

Your orator further represents that said John B. Laidley,
94 in all his negotiations, acts and doings leading up to the purchase of said land, and obtaining the conveyance of the same from the said Sarah H. G. Pennybacker, was endeavoring and planning to defraud the said land company and divest it of its property, and of the possession thereof, and was conspiring and seeking to make the said Sarah H. G. Pennybacker his passive agent to accomplish such result, and that when he persuaded her to sell and convey to him a property worth many thousand dollars for the sum of five hundred dollars, it was an admission and confession on his part that he was making said purchase and procuring said title for a fraudulent purpose, and that he, in fact, induced the said Sarah H. G. Pennybacker to sell and convey to him said lands by false and fraudulent statements, and with a fraudulent purpose in view.

Your orator now further says that the said parties hereinbefore set out, who own said lots, hold the same by virtue of deeds from the Central Land Company to them and their vendors, they claiming (as he is informed, as innocent purchasers), under, by and through the Central Land Company, which claims under, by and through the deed from Sarah H. G. Pennybacker and her husband to this complainant (Exhibit B), and that their title is a legal and valid title. That at the date of February 25th, 1870, when this complainant, in his individual capacity, bought the said land of the said Sarah H. G. Pennybacker and her husband, the said deed of February 25th, 1870, was, as your orator is advised by his counsel and believes to be true, as the *the* law was then construed, recognized, settled and laid down in the State of West Virginia, as declared by the constitution of West Virginia, then in effect, a legal, valid and sufficient deed to convey the said title to this complainant, and that it did convey a fee-simple title to him, and was and is a valid, binding and existing contract between this complainant and the said S. H. G. Pennybacker; and the deed from this complainant in his

individual capacity to the Central Land Company, his vendee,
95 passed the title to the said land of which the twenty-two (22) lots sold are a part to the said Central Land Company, and vested the contract rights that this complainant had under said deed in the said Central Land Company and those claiming under it as vendees or otherwise.

Your orator further says that he is informed and believes, and now so alleges and charges, that at the date of the conveyance to him by said Sarah H. G. Pennybacker and her husband, February 25th, 1870, the statute of West Virginia under which the said Sarah H. G. Pennybacker, a married woman, conveyed her said land to this complainant, was, in effect, the same as the statute of Virginia, and such statute had before that time in various suits in the State of Virginia been construed by the highest courts in the State, and acknowledgments similar to the one in this case held valid, and the deeds to which such similar acknowledgments were attached held valid conveyances, and that such construction of said statute became and was a part of the law of West Virginia; and that up to that time no change had been made by any construction of said statute by the courts of West Virginia. That by section one of article nine, and section eight of article eleven, of the constitution of West Virginia of 1861, the laws of Virginia then in force in what is now West Virginia were the laws of West Virginia until altered or repealed by the legislature of West Virginia, and under section one of article thirteen of the West Virginia constitution of 1872, which provides that "all private rights and interests in lands in this State derived from or under the laws of the State of Virginia, and from or under the constitution and laws of this State, prior to the time this constitution goes into operation, shall remain valid and secure, and shall be determined by the laws in force in Virginia prior to the formation of this State and by the constitution and laws in force in this State prior to the time this constitution goes into effect"—your complainant the said Central Land Company and the owners of the respective lots were and are
96 entitled to have their rights under the Pennybacker deed of February 25th, 1870, construed according to the laws of West Virginia as they then were and had been construed, and to hold the land that they severally and respectively claim, free and clear of any claims of said John B. Laidley, growing out of his deed from said Sarah H. G. Pennybacker (Ex. "F"), which your complainant is informed he took with full knowledge of the facts attending your complainant's purchase in 1870; but not regarding the facts, the said John B. Laidley, and those claiming under him, for the purpose of asserting his title and right to the possession of said land and lots, claim and set up a different construction of the statute under which the deed of Sarah H. G. Pennybacker was taken, and thereby such claim impairs the rights of the said purchasers, vested in them by said deed (Exhibit B), and raise a cloud on their said title.

Your orator further says that by said deed of February 25th, 1870 (Exhibit B), and the intermediate conveyances, the said owners of

lots hereinbefore set out, became vested, under the law as it then stood, with the title to said lots which could not be divested by a legislative enactment, or by a subsequent decision of the court changing the settled rule of construction of the statute. But that since said deed of February 25th, 1870, was executed and possession delivered to your orator as the owner and purchaser of said tract of two hundred and forty (240) acres of land less one acre reserved, the supreme court of West Virginia, without any legislative enactment, has, by various decisions, changed said settled rules of construction as to the validity of the acknowledgments of deeds of married women in West Virginia, so that deeds with acknowledgments similar to the one attached to said deed of February 25th, 1870 (Exhibit B) that had been and were heretofore, as the law was construed, held valid and legal conveyances, are now held as invalid and void, thereby changing and impairing vested rights of property, and impairing the obligations of contracts. That until
97 said decisions of the supreme court of West Virginia were rendered, changing the settled rules of construction of the statute regarding acknowledgments of married women and their conveyances, the deed of February 25th, 1870 (Exhibit B), was held as unquestionably good; but since said decision a cloud has been cast upon your orator's title and possession and upon the title of those claiming under, by and through said Central Land Company of West Virginia; and said J. B. Laidley is setting up and pretending that said deed of Sarah H. G. Pennybacker, of the 25th of February, 1870 (Exhibit B), is now void by reason of said decisions rendered since the execution of said deed, and since rights of property have been acquired thereunder.

But your orator alleges that, under and by virtue of the Constitution of the United States, article 1, section 10, clause 1, no law or enactment can be passed by any State of the United States impairing the obligation of a contract, and that decisions of a court changing the settled rule of statutory construction cannot invalidate, impair or divest the rights of your orator or of the Central Land Company and those claiming under them to the said two hundred and forty (240) acres of land, less one acre reserved, conveyed to this complainant by said deed of February 25th, 1870 (Exhibit B). And that such decisions of the supreme court of West Virginia do not, and cannot, in any way affect or impair the vested rights of this complainant or of the Central Land Company, or of its vendees, to said tract of land.

Your orator is advised that if the deed from Sarah H. G. Pennybacker to this complainant (Exhibit B), and the title of the said Central Land Company and those holding under it to said two hundred and forty (240) acres of land, less one acre reserved, is held good, that the said land company will not be liable on any warranty in said deeds to said lot-owners; but if said John B. Laidley is allowed to take possession of said lots, as he threatens and is seeking to do, your orator as receiver will be compelled to defend
98 some twenty-two different suits on the covenant of warranty contained in the deeds conveying the said lots to the re-

spective parties now holding the title to the same; whereas, if his said threatened proceedings are stayed until the question of title is settled, a multiplicity of suits will thus be avoided.

Your orator further states that the said John B. Laidley, since his attempted purchase of the said tract of land from Sarah H. G. Pennybacker, has from time to time sold, and by deeds attempted to convey, part of said land, or an interest therein, to the defendants C. W. Campbell, J. E. Erwin, Thomas J. Bryan, James F. Brown, Mary E. Chilton, William E. Chilton, F. L. Doolittle, R. A. Goodwin, P. Frazier, Edward S. Doolittle, George F. Donella, James Pritchard, Sarah E. Erwin, C. E. Gwinn, O. E. Gwinn, W. W. Gwinn, W. R. Gunn, Rufus Switzer, Lillie Hanly, Garland Buffington, Robert T. Harvey, Thomas H. Harvey, W. H. H. Holswade, Henry Hartman, L. D. Isbell, C. W. Dillon, the heirs of B. Johnson, J. S. Marcum, Oscar Jones, Alberta Laidley, Miriam Laidley, B. L. Miles, Thomas Miles, Lizzie Montgomery, M. M. Morrison, George E. McDonald, James K. Oney, Gordon O'Bierne, Charles Rose, John Riggs, J. D. Terrell, John T. Wilson, N. Smith and Martha A. Wellman, and others, whose titles and holdings are to your orator unknown; that on August 5th, 1889, said John B. Laidley attempted to convey an undivided three-fourths of his alleged interest in this said tract of land to W. S. Laidley upon a trust set out in the said deed, as will fully and at large appear from a copy thereof, attached hereto and made a part hereof, and marked "Exhibit I."

Your orator further states that Vesta Laidley, the widow of Albert Laidley, claims that she is entitled to dower in said tract of two hundred and forty (240) acres of land, less one acre reserved, on the ground that said Albert Laidley, in his lifetime, had an interest in said tract of land which he conveyed to this complainant,
99 and in which she never released her dower, and that said Vesta Laidley has now pending in the circuit court of Cabell county a chancery suit to enforce her claim, as will appear from a copy of said bill filed herewith as part hereof, marked "Exhibit M."

Your orator further says that the said injunction proceedings now pending in the United States circuit court for the district of West Virginia, against the said John B. Laidley, the said receivership proceedings, the trust deed to W. S. Laidley, and Vesta Laidley's claim for dower, create and cause so much uncertainty in regard to the title to said property that the same, if sold by the said John B. Laidley, or his agents, will not bring anything like its fair value, and that the said sales, if made, and possession taken by said Laidley and those claiming under him, will cause great and irreparable loss and damage to the owners of the said several lots, and cause them to lose their entire property therein, and that the said Central Land Company of West Virginia, under and by virtue of the deeds heretofore made by it conveying the said several lots to the said several parties, may be compelled, by separate suits in each case, upon the warranty made to the purchaser of said lots, to pay the amount of damages obtained by the purchasers of the said several lots. And even if the injunction awarded against the said John B.

Laidley be made perpetual, and the deed and title under which the Central Land Company hold the said land be adjudged valid, that then the said Central Land Company, or your orator, as receiver, would be compelled to defend the twenty-two several suits in order to set up his defense and prevent the said parties from recovering against him, or the said company, the amount of damages sustained by them by reason of the loss of their said property; and if said injunction proceedings should be dismissed, and the title of said John B. Laidley should be declared and held good and valid by this honorable court, then your orator would still be compelled to defend the suits brought, in order to avoid paying the damages that would be claimed by the said parties for
100 the loss of their property; whereas, if the said sales were stayed, and further assertion of Laidley's claim prevented until the question of title is definitely ascertained, there would be no necessity for suits, because the amounts to be paid would then be fixed and determined, and your orator, as receiver of this the circuit court of the United States of West Virginia, could thus, by order of the court, be directed to pay said sums to such parties as held under warranty deed, and thus avoid the costs and multiplicity of suits; that to avoid such multiplicity of suits and costs your orator is entitled to have the said John B. Laidley prevented from enforcing his pretended claim of title to the said lots and land until the final determination of the question of title thereto.

And this complainant further alleges and avers that he is advised and believes, and therefore charges to be true, that, if by the said deed (Ex. "F") of the said Sarah H. G. Pennybacker to the said defendant John B. Laidley, the legal title to said tract of land passed to the said John B. Laidley, this complainant is entitled, by reason of the premises, to a decree in this cause, compelling the said John B. Laidley, and those of the defendants holding or claiming to hold any title to any portion of said land under, by or through the said John B. Laidley, whether by direct grant and deed from the said John B. Laidley or by intermediate conveyances and all others claiming to hold any title to said land or any part thereof under or through the said John B. Laidley to convey to him in his capacity as the receiver of the said Central Land Company, and to those holding lots in said tract of land under and through the said Central Land Company, the legal title to the portions of said tract of land owned by and in the possession of this complainant as said receiver, and owned by and in the possession of those holding lots in said tract of land under and through the said Central Land Company, as hereinbefore set out, which said title he, the said John B. Laidley and those of the defendants and all others whose
101 titles and holdings are unknown to this complainant who hold or claim to hold any title to any portion of said land under, by or through the said John B. Laidley, as aforesaid, hold in equity as trustees for the benefit of this complainant and those holding lots in said tract of land under and through the said Central Land Company, as hereinbefore stated; and, therefore, in consideration of the premises, and inasmuch as this complainant is without

adequate remedy at law, this complainant prays that the defendant John B. Laidley, and those of the defendants holding or claiming to hold any title to any portion of said land under, by or through the said John B. Laidley, whether by direct grant or deed from the said John B. Laidley, or by intermediate conveyances, may be compelled by a proper decree to be made herein to convey to this complainant, in his capacity as the receiver of said Central Land Company, and to the grantees of the said Central Land Company and those claiming under them respectively by deed of special warranty, the portion of said tract of land so held and claimed by them under their several deeds, as hereinbefore mentioned.

And this complainant further alleges and avers, that he is a citizen and resident of the State of New York; that the defendants John B. Laidley, W. S. Laidley, Thomas J. Bryan, James F. Brown, Mary E. Chilton, William E. Chilton, C. W. Campbell, William Dusty, F. L. Doolittle, R. A. Goodwin, P. Frazier, Edward S. Doolittle, George F. Donnella, James Prichard, C. E. Gwinn, O. E. Gwinn, W. W. Gwinn, W. R. Gunn, Rufus Switzer, Lillie Hanley, Garland Buffington, W. H. H. H. Holswade, George H. Kyle, L. D. Isbell, C. W. Dillon, J. S. Marcum, A. L. Williams, S. R. Hall, Oscar Jones, Miriam Laidley, B. L. Miles, Thomas Miles, Lizzie Montgomery, M. M. Morrison, George E. McDonald, James K. Oney, Gordon O'Bierne, Charles Rose, John Riggs, J. D. Terrell, John T. Wilson, N. Smith, Martha A. Wellman, Sarah H. G. Pennybacker, Thomas H. Harvey, R. T. Harvey, Shelby J. Love, I. Myers, R. K. Price, J. S. M. Curry, Susan
102 A. Remely, C. F. Remely, Michael O'Brien, John O'Brien, James Jasper, Jackson Jasper, George W. Knapp, Margaret Sands, Katharine A. Kneff, Henry Clay Greenwell, William Remele, Henry Hartman, and Wayne Ferguson are, as this complainant is informed and verily believes, citizens and residents of the State of West Virginia; upon information and belief, that the defendants E. M. Mitchell, Fannie E. Pennybacker, A. P. Mitchell, and Samuel Mitchell, the heirs of E. T. Mitchell, deceased, are citizens and residents of the State of West Virginia, except Samuel Mitchell, who is a citizen and resident of the State of Idaho; upon information and belief, that the defendants George Noble, Ann Burns, Calla Smith, Victoria Nurse, Alexander Smith, Jobe Smith, Maggie Smith, Lucinda Norris, and —— Smith, whose first name is unknown, the heirs of J. M. Noble, deceased, are citizens and residents of the State of Ohio; that the residence of the heirs of B. Johnson, deceased, is unknown to this complainant; that the defendant J. E. Erwin, as the complainant is informed and verily believes, is a citizen and resident of the State of Tennessee; that the defendant Vesta Laidley is a citizen and resident of the State of California; upon information and belief, that the defendants Lou Ann Jobe, William R. Jobe, Thomas Jobe, Mary A. Jobe, Carlos Jobe, and Hattie Jobe, an infant of the age of sixteen years, the heirs of Samuel F. Jobe, deceased, are citizens and residents of the State of West Virginia; upon information and belief, that the defendant J. L. M. Curry is a citizen and resident of the State of Virginia; upon infor-

mation and belief, that the defendant Sarah E. Erwin is a citizen and resident of Tennessee, and that the defendant The Chesapeake and Ohio Railway Company is a citizen and resident of the State of West Virginia.

And this complainant, on account of the premises and because he is remediless, save and except in a court of equity, where matters of a nature similar to those hereinbefore set forth are alone and properly cognizable, prays that the said John B. Laidley, W. S.
103 Laidley, Thomas J. Bryan, James F. Brown, Mary E. Chilton, William E. Chilton, C. W. Campbell, William Dusty, F. L. Doolittle, R. A. Goodwin, P. Frazier, Edward S. Doolittle, George F. Donnella, James Prichard, C. E. Gwinn, O. E. Gwinn, W. W. Gwinn, W. R. Gunn, Rufus Switzer, Lillie Hanley, Garland Buffington, W. H. H. Holswade, George H. Kyle, S. D. Isbell, C. W. Dillon, J. S. Marcum, A. L. Williams, S. R. Hall, Oscar Jones, Miriam Laidley, B. L. Miles, Thomas Miles, Lizzie Montgomery, M. M. Morrison, George E. McDonald, James K. Oney, Gordon O'Bierne, Charles Rose, John Riggs, J. D. Terrell, John T. Wilson, N. Smith, Martha A. Wellman, Sarah H. G. Pennybacker, Thomas H. Harvey, R. T. Harvey, Shelby J. Love, I. Myers, R. K. Price, J. L. M. Curry, Susan A. Remely, C. F. Remely, Michael O'Brien, John O'Brien, James Jasper, Jackson Jasper, George W. Knapp, Margaret Sands, Katherine A. Kneff, Henry Clay Greenwell, William Remely, Henry Hartman, Wayne Ferguson, E. M. Mitchell, Fannie E. Pennybacker, A. P. Mitchell and Samuel Mitchell, the heirs of E. T. Mitchell, deceased; Lou Ann Jobe, William R. Jobe, Thomas Jobe, Mary A. Jobe, Carlos Jobe, Hattie Jobe, an infant of the age of sixteen years, the heirs of Samuel F. Jobe, deceased, all citizens and residents of the State of West Virginia except Samuel Mitchell, who is a citizen and resident of the State of Idaho; George Noble, Ann Burns, Calla Smith, Victoria Morse, Alexander Smith, Jobe Smith, Maggie Smith, Lucinda Norris and —— Smith, whose first name is unknown, the heirs of J. M. Noble, deceased, all citizens and residents of the State of Ohio; the unknown heirs of B. Johnson, deceased; J. E. Erwin, a citizen and resident of the State of Tennessee; Vesta Laidley, a citizen and resident of the State of California; J. L. M. Curry, a citizen and resident of the State of Virginia; Sarah E. Erwin, a citizen and resident of Tennessee, and the Chesapeake and Ohio Railway Company, a corporation duly
104 organized under and by virtue of the laws of the State of Virginia and the State of West Virginia, be made parties defendant to this amended bill and required to answer the same, and that to that end all proper summons, proceedings, etc., do issue.

And this complainant further prays that the said J. B. Laidley, C. W. Campbell, J. E. Erwin and W. S. Laidley, and all others claiming under him, the said John B. Laidley, and each of them, be enjoined and inhibited from any interference whatsoever with the possession of the said special receiver of the said two hundred and forty acre tract of land (less the one acre reserved), or any part thereof and from doing any act which will tend to cast a cloud upon the title of the said Central Land Company, by reason of which your orator's possession and title may be in any manner affected, and that

they, the said John B. Laidley, C. W. Campbell, J. E. Erwin, W. S. Laidley, and all others claiming any title to said tract of land under him, the said John B. Laidley, whether by direct or intermediate conveyances, and each of them, their agents, attorneys and servants, may be enjoined from proceeding to enforce any claim against said several lots so sold by said Central Land Company out of said two hundred and forty (240) acres of land, less one acre reserved as aforesaid, and from proceeding to take possession of the said several lots, and from making any sales of said several lots, or any of them, until the question touching the validity of the title to said land can be finally settled and adjudicated, and the amounts, if any, which your orator, as receiver of the said Central Land Company, may be required to pay as damages for breach of warranty to the said several lot-owners be ascertained, and until it is also ascertained to whom such amounts are payable, and in what proportions.

Your orator also further prays that the said deed from the said Sarah H. G. Pennybacker to the defendant John B. Laidley, dated January 28th, 1882 (Ex. "F"), may be declared fraudulent, null and void, and the same vacated and annulled, and the cloud upon the title of the said Central Land Company to said land, caused
105 by said deed, removed, and that the deeds of parcels of said two hundred and forty acres of land, less one acre reserved, from J. B. Laidley to J. E. Erwin, C. W. Campbell, W. S. Laidley, Thomas J. Bry, James F. Brown, Mary E. Chilton, William E. Chilton, F. L. Doolittle, R. A. Goodwin, P. Frazier, Edward S. Doolittle, George F. Donnella, James Prichard, Sarah E. Erwin, C. E. Gwinn, O. E. Gwinn, W. W. Gwinn, W. R. Gunn, Rufus Switzer, Lillie Hanly, Garland Buffington, Robert T. Harvey, Thomas H. Harvey, W. H. H. Holswade, Henry Hartman, L. D. Isbell, C. W. Dillon, the heirs of B. Johnson, J. S. Marcum, Oscar Jones, Alberta Laidley, Miriam Laidley, B. L. Miles, Thomas Miles, Lizzie Montgomery, M. M. Morrison, George E. McDonald, James K. Oney, Gordon O'Bierne, Charles Rose, John Riggs, J. D. Terrell, John T. Wilson, N. Smith and Martha A. Wellman, and to all others whose titles and holdings in said land from and under the said John B. Laidley, whether by direct or intermediate conveyances, are unknown to this complainant be set aside and declared of no effect; that the title of the said Central Land Company to said tract of 240 acres of land, less one acre reserved, now vested in your orator, be quieted, confirmed and held valid. And complainant further prays that all the relief asked for in the original bill against each and all of the said defendants may be granted, and that all such other, further and general relief be granted him as is prayed for in this his amended bill and as the case may require, and to equity seems *to* fit, and that to that end all proper orders and decrees may be made and entered and references directed, and he will ever pray, etc.

C. P. HUNTINGTON,
Special Receiver of the Central Land Company of West Virginia.

SIMMS & ENSLOW,
GEO. C. STURGISS,
Solicitors for Complainant.

106 STATE OF NEW YORK, } ss:
City and County of New York, }

Collis P. Huntington, being duly sworn, deposes and says that he is the special receiver of the Central Land Company of West Virginia and the complainant in the above-entitled suit; that he has read the foregoing amended bill of complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief, and that as to those matters he believes it to be true.

C. P. HUNTINGTON.

Subscribed and sworn to before me this 13th day of January, 1894.

WILLIAM SHILLABER,
[NOTARIAL SEAL.] *Notary Public, New York County.*

107 EXHIBIT A.

Know all men by these presents, that I, Rebecca J. Everett, of the county of Lawrence and State of Ohio, for and in consideration of eight thousand dollars, to me in hand paid by Mrs. Sarah H. G. Pennybacker, of Wood county, W. Va., have bargained and sold, and by these presents grant, bargain, sell — convey, unto the said S. H. G. Pennybacker, the following-described real estate, situate in Cabell county, W. Va., to wit: being lot No. 4 in the division of a tract of land inherited from Isaac Frampton, Jr., by Ephraim M. Frampton, David Frampton, Hiram Frampton and the said Rebecca J. Everett, and by and in accordance of decrees of the circuit court of Cabell county, Va., dated respectively Nov., 1862, and March, 1863, John Laidley, a special commissioner, appointed for the purpose of deeding said tract, did accordingly deed to the said R. J. Everett the following-described tract which is now by her deeded to the said Sarah H. G. Pennybacker, to wit: Beginning at a stake, corner of lot No. 3 on the Ohio river, S., 19¼ E., 377 poles to a stake; from which a small sycamore stands S., 1½ E., two poles and three links; N., 70¾ E., 1 pole and 24 links to a stake; from which the above sycamore stands N., 33 W., 3 poles and 7 links, and another stands 52½ E., 3 poles and six links; thence S., 13 E., 120 poles to two white oaks; S., 30 W., 36 poles to a white oak among some rocks on a point; S., 70 W., 50 poles to a black oak and a white oak on a point; S. 11½ W., 120 poles to two white oaks on a hill; S., 54 E., 62 poles to two black oaks; N., 40 E., 150 poles to a chestnut oak near the top of a ridge; N. 5 W., 180 poles to a white oak and two beeches; N., 21 W., 8 poles to the S. E. corner of the Brown tract; thence N., 19 W., 398 poles to a stake on Ohio river; S., 73 W., 47 poles and 14 links to the place of beginning, containing 240 acres, more or less; to have and to hold the premises aforesaid unto the *the* said Sarah H. G. Pennybacker, her heirs and
108 assigns forever. And the said Rebecca J. Everett, for herself, her heirs and assigns, covenants with the said Sarah H. G.

Pennybacker that she is lawfully seized of the premises aforesaid; that the premises and appurtenances are free and clear from all incumbrance; and that she will forever warrant and defend the same to the said Pennybacker, her heirs and assigns, against the lawful claims of all persons whomsoever.

In witness whereof, I have hereunto set my hand and seal this 18th day of August, A. D. one thousand eight hundred and sixty-five.

R. J. EVERETT. [SEAL.]

In presence of—
JAMES A. BARTRAM.
JENNIE RANIE.

[Revenue stamp, $8.00.]

STATE OF OHIO, *Lawrence County,* } ss:

Before me, the undersigned authority in and for said county, personally came the above-named Rebecca J. Everett and acknowledged the signing and sealing of the foregoing conveyance to be her voluntary act and deed, this 18th day of August, 1865.

[Notarial Seal, Lawrence County, Ohio.]

JAMES A. BARTRAM,
Notary Public, Lawrence County, Ohio.

CABELL COUNTY, *West Virginia,* } ss:

RECORDER'S OFFICE.

This deed, from Rebecca J. Everett to S. H. G. Pennybacker, was this day presented to me, the recorder of the county and State aforesaid, together with the certificate of acknowledgment thereon endorsed. The same is admitted to record.

Given under my hand this 7th day of Feb'y, 1866.

THOS. J. F. HAYSLIP, *Dep't.*,
For THOS. J. HAYSLIP, *Recorder.*

109 EXHIBIT B.

Know all men by these presents: That we, John M. Pennybacker and Sarah H. G. Pennybacker, of the county of Cabell and State of West Virginia, parties of the first part, and C. P. Huntington, of the city, county and State of New York, of the second part, witnesseth:

That the parties of the first part, in consideration of eleven thousand dollars, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey to the said C. P. Huntington, his heirs and assigns forever, all that certain tract or parcel of land situate, lying and being in the county of Cabell and State of West Virginia, on the Ohio river, about three miles below the mouth of the Guyandotte river, and bounded as follows, to wit: "Beginning at a stake, corner of lot No. 3 in the division of the lands of Isaac

Frampton, on the Ohio river, S., 19¼° E., 377 poles to a stake; from which a small sycamore stands S., 1½ east, two poles and three links; N., 70¾ east, one pole and 24 links to a stake; from which the above sycamore bears N., 33° W., three poles and 7 links, and another bears 32½ E. 3 poles and 6 links; thence S., 13° E., 120 poles to two white oaks; S., 30 W., 36 poles to a white oak among some rocks on a point; S., 70 W., 50 poles to a black oak and a white oak on a point; S., 11½ W., 120 poles to two white oaks on a hill; S., 54 E., 62 poles to two black oaks; N., 40° E., 150 poles to a chestnut oak near the top of a ridge; N., 5 W., 180 poles to a white oak and two beeches; N., 21 W., 8 poles to the S. E. corner of the Brown tract; thence N., 19 W., 398 poles to a stake on Ohio river; S., 73 W., 47 poles and 14 links to the place of beginning; containing 240 acres, more or less; subject, however, to a reservation of one acre of land at the corner of the field where the lane and the turnpike road intersect, and whereon a grocery storehouse stands. Beginning at a stake on the side of the turnpike road and the west side of Beuhring's lane on my line, thence, with the turnpike, two hundred and ten feet
110 to a stake; thence S., 19 E., 210 feet to a stake; thence east, and parallel with turnpike, 210 feet to a stake in my line; thence with said line N., 19° W., 210 feet to the beginning. The title of which land is hereby retained and reserved to S. H. G. Pennybacker as if this deed was never made. Also, the right to occupy the land for the present year, work the same and apply the crop for his own use; but to allow said Huntington to work on the same for any purpose in building and completing the Chesapeake and Ohio R. road and its appurtenances. And all the estate, title and interest of the said John M. Pennybacker and Sarah H. G. Pennybacker either in law or equity of, in and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof, to have and to hold the same to the only proper use of the said C. P. Huntington, his heirs and assigns forever. And the said John M. Pennybacker and Sarah H. G. Pennybacker, for themselves and for their heirs, executors and administrators, do hereby covenant with the said C. P. Huntington, his heirs and assigns that they are the true and lawful owners of the said premises, and have full power to convey the same; that the title so conveyed is clear, free and unencumbered; and further, that they will generally warrant and defend the same against all claim or claims of all persons whomsoever.

In witness whereof, the said John M. Pennybacker and Sarah H. G. Pennybacker have hereunto set their hands and seals this 25th day of February, in the year of our Lord one thousand eight hundred and seventy.

JOHN M. PENNYBACKER. [SEAL.]
S. H. PENNYBACKER. [SEAL.]

Signed, executed and acknowledged in presence of us.

——— ———.

——— ———.

[U. S. revenue stamp, eleven dollars ($11.00).]

111 GUYANDOTTE TOWNSHIP,
State of West Virginia, County of Cabell, } *ss:*

Be it remembered that on the 25th day of February, in the year of our Lord one thousand eight hundred and seventy, before me personally came John M. Pennybacker, party and granter in the foregoing deed, and acknowledged the signing thereof to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my seal on the day and year aforesaid.

THOS. J. HAYSLIP, *Recorder.* [SEAL.]

STATE OF WEST VIRGINIA, }
County of Cabell. }

Personally came before me, the undersigned, recorder of the county and State aforesaid, Sarah H. G. Pennybacker, wife of the above-mentioned John Pennybacker and party to the foregoing deed, and, being examined by me privily, and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Sarah H. G. Pennybacker, acknowledged that she had willingly signed, sealed and delivered the same and wished not to retract it.

Given under my hand and seal this 25th day of February, 1870.

THO. J. HAYSLIP, *Recorder.* [SEAL.]

112 RECORDER'S OFFICE,
Cabell County, West Virginia, } *ss:*

This deed, from J. M. Pennybacker and wife to C. P. Huntington, was this day presented to me, the recorder of the county and State aforesaid, together with the certificates of acknowledgment thereon endorsed. The same is admitted to record.

Given under my hand this 31st day of March, 1870.

THO. J. HAYSLIP, *Recorder,*
By THOS. J. F. HAYSLIP, *Dept.*

EXHIBIT C.

This deed, made the 13th day of April, in the year 1870, between Albert Laidley and Vesta, his wife, of the first part, and C. P. Huntington, of the second part, witnesseth,

That in consideration of the sum of thirty-six thousand six hundred and seventy-three $\frac{50}{100}$ dollars, the receipt of which is hereby acknowledged, the said party of the first part doth grant unto the said party of the second part all of two certain tracts or parcels of land, lying in the county of Cabell, State of West Virginia, and in the township of Guyandotte, bounded and described as follows, to wit;

One tract containing two hundred and ninety-nine acres, bounded and described as follows: Beginning at a stake, northeast corner of S. W. Johnston's land, and running with the upper line thereof S., $20\frac{3}{4}°$ E. 308 p. to a stake; thence N., 80° W., 3 poles and 18 links

to a stone; thence S., 75° W., 115 poles to a stone near a sycamore tree, southwest corner of S. W. Johnston's land; thence S., 21° E., 112 po. to a stake on Watson's line, at a dogwood; thence with s'd Watson's line S., 68 W., 60 po. to the dogwood corner; thence S., 21° W., 36 poles to two wht. oaks, beeches and sugar-tree; south, 10° W., 114 poles to three wht. — on a ridge; S., 65 E., 48 poles to 2 wht. oak-; N. 84° E., 46 poles to wht. oak and locust stump;
113 N., 49 E., 160 po. to a bl'k oak and chestnut oak; S., 88° W., 110 po. to a stake, from which a black walnut — N., 21½ E., 2 p. and 7 links; and an apple tree S., 29½ W., 4 po. stands; north, 29 E., 186 p. to a chestnut oak on a hillside; N., 33° E., 61 po. to two double willows; N., 20 W., 186 po. to a stone; S., 70 W., 25 poles, 15 links, to a stone; N., 20 W., 25 poles to a stone near the turnpike; N., 70° E., 25 p. and 15 links to a stone; N., 20 W., 121 p. to a stake on the Ohio river; S., 70 W., 53 p. and 16 links to the beginning; it being the same which was conveyed to me on the 22nd day of March, 1870, by deed of Jno. L. Johnston and Mary Jane, his wife; and Wm. L. Johnston and Susan, his wife; by deed recorded in Deed Book B, page 422, of Cabell county.

One tract containing one hundred and ten acres, situate in Cabell county, and bounded on the southeast by F. D. Beuhring, on the east by E. M. Frampton, and on the north by the lands formerly of Wm. Land, J. L. Johnson, and hereinbefore described, and parcel of a certain tract of 800 acres of the s'd Laidley, fully described in a deed of O. A. and E. McGinnis, recorded in Deed Book J, page 441, of Cabell county, which is to be laid off by the party of second part, or under his direction, by line which shall not cross the Porterfield ridge, and the *meets*, bounds and abuttals so established shall be regarded as the *meets*, bounds and abuttals intended by this conveyance, but not including one and a half acres sold to Sam'l Allen by s'd Laidley, and also his entire interest in a tract of land containing 240 acres, purchased of J. M. Pennybacker and wife by s'd Laidley, and conveyed, by his directions, to C. P. Huntington, the title to which the s'd Laidley covenants to warrant and defend generally. And the said party of the first part doth hereby covenant with the said party of the second part that he will warrant generally the property hereby conveyed.

Witness the following signatures and seals:

ALBERT LAIDLEY. [SEAL.]
VESTA LAIDLEY. [SEAL.]

114 STATE OF WEST VIRGINIA, } *To wit:*
Cabell County, }

I, Jno. W. Church, notary public in and for the county and State aforesaid, do certify that Albert Laidley and Vesta Laidley, his wife, whose names are signed to the writing hereto annexed, bearing date on the 13th day of April, 1870, have acknowledged the same before me in my county aforesaid, and the said Vesta Laidley, being examined by me privily and apart from her husband, and having the writing, aforesaid, fully explained to her, she, the said

Vesta Laidley, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand this 13th day of April, 1870.

JOHN W. CHURCH,
Notary Public.

STATE OF WEST VIRGINIA, }
Cabell County. }

RECORDER'S OFFICE, *April* 16, 1870.

The foregoing deed, with U. S. internal-revenue stamps thereon for thirty-seven (37) dollars, was this day presented in said office, and, together with the certificate thereon, admitted to record.

TH. J. HAYSLIP, *Recorder.*

115 EXHIBIT D.

This deed, made the sixteenth day of October, in the year one thousand eight hundred and seventy-one, between Collis P. Huntington, of the city, county and State of New York, and Elizabeth S., his wife, parties of the first part, and the Central Land Company of West Virginia, a corporation created by and under the laws of the State of West Virginia, party of the second part, witnesseth,

That in consideration of the sum of six hundred thousand dollars, the said parties of the first part do grant unto the said part- of the second part all those certain tracts, pieces or parcels of land situate, lying and being in the county of Cabell and State of West Virginia.

First. All that certain piece or parcel of land bounded and described as follows, to wit: Beginning at a stake on the bank of the Ohio river, 68 poles above Wm. H. Hagan's upper corner; thence S., 15½ W., 224 poles to a pile of stone on the railroad; thence with the railroad N., 77 E., 39 poles and 5 links to a stake; then leaving the R. road S., 7 E., 274 poles to a white oak; S., 3 E., 278 poles to a stake on the military line, and with it N., 89 E., to Mrs. Rickett's line, and with it N. 3, east, to John Everett's land, and with his line N. 3, east, to the first run on the right-hand side of the Guyandotte river and with the meanders of said run to the Guyandotte river; thence down the west bank of said river, including its banks and shores, to the Ohio river; thence down the Ohio river, including its banks, shores and water privileges, to the beginning, containing four hundred and thirty-four acres, more or less; being the same premises which were conveyed to said C. P. Huntington by James H. Buffington and Columbia L., his wife, by deed dated February 14, 1870, recorded in the recorder's office of said Cabell county, March 22d, 1870, in Deed Book B, page 408.

116 Second. All that certain piece or parcel of land lying and being on the Ohio river, and bounded and described as follows, to wit: Beginning at a stake on the bank of said river, upper corner to the land claimed by the heirs of John Laidley, dec'd; thence with the upper line of said Laidley's land to a line of a tract

of land now owned by P. C. Buffington; thence with the north line of the same to a white oak and dogwood, corner to the Hagan tract; thence with the lower line of the same to a stake on the bank of said river; thence down said river and binding thereon to the beginning, containing two hundred and fifty-eight acres, be the same more or less, being the same premises which were conveyed to the said C. P. Huntington by John N. Buffington of said Cabell county, by deed dated the 23rd day of July, 1870, recorded in the recorder's office of said county of Cabell, July 27, 1870, in Deed Book B, folio 508.

Third. All that certain tract of land situate in said Cabell county, West Virginia, containing four — and fifty-six acres, more or less, and described generally as follows: Beginning at a stake on the Ohio river corner formerly of John N. Buffington and John Laidley, now, or late of C. P. Huntington and Albert Laidley; thence southerly, and with the line late of said Huntington, to the corner late of said Huntington, Laidley and P. C. Buffington; thence westerly with the southern line of said Laidley's tract to the line of the tract formerly owned by William H. Buffington; thence southerly and westerly with the boundary line of said tract to the line of the tract formerly owned by Wm. Paine; thence with the boundary line to the line of P. C. Buffington; thence northerly with the line of said Buffington to the Ohio river; thence easterly and with said river to the beginning—being the same premises which were conveyed to the said C. P. Huntington by Albert Laidley and Vesta, his wife, by deed dated October 20th, 1870, recorded in the recorder's office of said county of Cabell on the 22d day of October,
117 1870, in Deed Book C, folio 2, subject to the reservation and exceptions contained in said deed.

Fourth. All those certain tracts or parcels of land situate in said county which in a certain deed executed by Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated April 13th, 1870, recorded in the recorder's office of said county, April 16th, 1870, in Deed Book B, 445, *an* bounded and described as follows, to wit: One tract containing two hundred and nin-ty-nine acres, bounded and described as follows: Beginning at a stake, northeast corner of S. W. Johnston's land, and running with the upper line thereof, S., 20¾° E., 308 p. to a stake; thence N., 80° W., 3 poles and 18 links to a stone; thence S., 75° W., 115 p. to a stone near a sycamore tree, southwest corner of S. W. Johnston's land; thence S., 21° E., 112 po. to a stake in Watson's line at a dogwood; thence with said Watson's line S., 68 W., 60 po. to the dogwood corner; thence S., 21° W., 36 po. to two white oaks, beeches and sugar tree; S., 10° W., 114 p. to three wh't- oaks on a ridge; S. 65 E., 48 poles to two white oaks; N. 48° E., 46 poles to a white oak and locust stump; N., 49 E., 160 po. to a black oak and chestnut oak; S., 88 W., 110 p. to a stake from which a black walnut —, N., 21½ E., 2 p. and 7 links, and an apple tree, S., 29½ W., 4 po., stands; north, 29 E., 186 p. to a chestnut oak on a hillside; N., 33 E., 61 po. to two double willows; N., 20 W., 186 po. to a stone; S., 70 W., 25 poles, 15 links to a stone, N., 20° W., 121 po. to a stake on the Ohio river; S., 70

W., 53 p. and 16 links to the beginning; it being the same which was conveyed to me on the 22d day of March, 1870, by deed of Jno. L. Johnston and Mary Jane, his wife, and Wm. L. Johnston and Susan, his wife, by deed recorded in Deed Book B, page 422, of Cabell county.

One tract containing one hundred and ten acres, situate in Cabell county, and bounded on the southeast by F. D. Beuhring, on the east by E. M. Frampton, and on the north by the lands formerly of Wm. L. and J. L. Johnston, and hereinbefore described, and
118 parcel of a certain tract of 800 acres of the said Laidley, fully described in a deed of O. A. and E. McGinnis, recorded in Deed Book J, page 441, of Cabell county, which is to be laid off by the party of the second part, or under his directions, by lines which shall not cross the Porterfield ridge; and the *meets*, bounds and abuttals so established shall be regarded as the *meets*, bounds and abuttals intended by this conveyance, but not including one and one-half acres sold to Sam'l Allen by said Laidley; and also his entire interest in a tract of land containing 240 acres, purchased of J. M. Pennybacker and wife, by said Laidley; and conveyed by his directions to C. P. Huntington, the title to which said Laidley covenants to warrant and defend generally.

Fifth. All those three certain tracts or parcels of land situate in said county, which in a certain deed executed by the said Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated July 25th, 1870, recorded in the recorder's office of said county, July 25, 1870, in Deed Book "B," folio 505, are bounded and described as follows, to wit: One containing seven hundred acres, known as the Everett farm, and bounded on the north by the Ohio river, on the west by the lands of C. P. Huntington, on the east by the lands of J. M. Hanley, on the south by the lands of F. D. K. Beuhring and others, the said tract being fully described in a deed from F. B. Kline, special com'r, to Albert Laidley; recorded in Deed Book B, folio 499, Cabell county, W. Va.

One other tract containing two hundred and forty-two acres, known as the Ephraim Frampton farm, and described as follows: Bounded on the north by the Ohio river, on the east by the lands of C. P. Huntington, on the west by the lands of A. Laidley, and on the south by the lands of A. Laidley, and fully described in a deed of E. M. Frampton and wife to A. Laidley, recorded in Deed Book B, folio 500, Cabell county, W. Va.; excepting from the quantities in said deed a lot of one acre of land conveyed by A.
119 Laidley to Nancy M. Frampton by deed describing the same and recorded in Deed Book B, folio 501, Cabell county.

And one tract containing two hundred and seven acres, and known as the Dr. McCullough land, and described as follows: Bounded on the north by the Ohio river, on the east by the lands of A. Laidley (and herein conveyed); on the west by the lands of C. P. Huntington; on the south by Laidley and Huntington; the same being fully described in a deed by T. B. Kline, special com'r, and P. H. McCullough and wife to A. Laidley, excepting two lots of fifty feet in width by one hundred feet in length, recorded in said deed. The

said several tracts making in the aggregate eleven hundred and forty-nine acres, of which is excepted and reserved from this grant the lot of one acre above referred to; also, the two lots of five thousandfeet each, above referred to; also, a lot of six acres conveyed by A. Laidley and wife to F. D. K. Beuhring by deed recorded in Deed Book B, folio 503, Cabell county, W. Va.

Sixth. All those two certain tracts or parcels of land situate in said county, which in a certain deed executed by said Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated October 20th, 1870, recorded in the recorder's office of said county, October 22, 1870, in Deed Book C, folio 1, *and* bounded and described as follows, to wit:

One tract beginning at a stake on the Ohio river, corner of C. P. Huntington and Albert Laidley, formerly of C. Everett and John M. Hanly; thence southerly and with the line of C. P. Huntington to the southwestern corner of the said J. M. Hanly tract; thence easterly, and northerly with the boundary lines of said tract to the Ohio river; thence westerly, and with the Ohio river to the beginning, the said tract containing three hundred acres, more or less.

The other tract, also situate in said county, adjoining the above-described tract, being bounded and described as follows, to wit:

Commencing at a stake on the Ohio river in the line of P. C.
120 Buffington and Albert Laidley, formerly William P. Holderby; thence S., 5½ E., 1,173 feet to the corner of the Marshall College lot; S., 47¾ W., 564 ft. to a stake; S., 50° 10′ W., 875½ feet to the northwestern corner of said college lot; S., 50° 10′ W., 1,343½ — to a stake on the line formerly of J. H. Poage; thence with the line of said Poage S., 17¼ E., 1,355 ft. to a stake fifty feet south of the center line of the Chesapeake and Ohio r'road as at present located; thence parallel with said center line of said road S., 77° 15′ W., 1,103 ft. to a stake on the line of the tract of land formerly owned by John M. Hanly; thence northerly with the line of said Hanly to the Ohio river; thence easterly with the river to the beginning, containing two hundred and four acres, more or less, saving and reserving from that part of this tract, formerly owned by Wm. P. Holderby, a lot containing four acres, and certain rights of way fully described in his deed to Albert Laidley, of record in Cabell county, as a reservation, and also from that part of the tract formerly owned by Jas. H. Poage, four acres, described in the reservation made in his deed to Albert Laidley, also of record in Cabell county.

Seventh. All that certain tract of land which in a certain deed executed by John M. Pennybacker and Sarah, his wife, to said C. P. Huntington, dated February 25th, 1870, recorded in the recorder's office of said county, March 31st, 1870, in Deed Book B, pages 427 and 428, is bounded and described as follows, to wit:

All that certain tract or parcel of land situate, lying and being in the county of Cabell and State of West Virginia, on the Ohio river, about three miles below the mouth of the Guyandotte river, and bounded as follows, to wit: Beginning at a stake, corner of lot No. 3, in the division of the lands of Isaac Frampton, Jr., on the

Ohio river, south, 19¼ east, 377 poles to a stake; from which a small sycamore stands S., 1½ east, two poles and three links; N., 70¾ east, one pole and 24 links to a stake; from which the above sycamore bears N., 33° W., three poles and 7 links, and another bears,
121 32½ E., 3 poles and 6 links; thence south, 13° E., one hundred and twenty poles to two white oaks; S., 30° W., thirty-six po. to a white oak among some rocks on a point, S. 70° W., 50 poles to a black oak and white oak on a point, S., 11½ W., 120 poles to two white oaks on a hill; S. 54° E., 62 poles to two black oaks; N., 40° E., 150 poles to a chestnut oak near top of ridge; N., 5° W., 180 poles to a white oak and two beeches; N., 21° W., 8 poles to the S. E. corner of the Brown tract; thence N., 19° W., 398 poles to a stake on the Ohio river; S., 73 W., 47 poles and 14 links to the beginning—containing 240 acres, be the same more or less; subject, however, to a reservation of one acre of land at the corner of the field where the lane and the turnpike intersect, and whereon a grocery-store house now stands. Beginning at a stake on the side of the turnpike road and the west side of Beuhring's lane, on my line; thence with the turnpike two hundred and ten feet, to a stake; thence S., 19 E., 210 feet to a stake; thence east and parallel with turnpike 210 ft. to a stake in my line; thence with said line N., 19 W., 210 feet to the beginning. The title of which land is hereby retained and reserved to said S. H. G. Pennybacker as if this deed was never made." Also, the right to occupy the land for the present year, work the same and apply the crops for his own use, but to allow said Huntington to work on the same for any purpose in building and completing the Chesapeake & Ohio R. road, and its appurtenances, being the same 240 acres above referred to in the closing paragraph of the fourth description.

Eighth. All that certain tract of land situate in the county of Cabell and State aforesaid, which, in a certain deed, executed by said Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated December 7, 1870, recorded in the recorder's office December 7th, 1870, in Deed Book C, folio 39, is bounded and described as follows, to wit:

All of that tract of land s'd Albert Laidley bought of Wm. P. Holderby, and deeded on the 7th day of October, 1870, and
122 recorded in Deed Book B, page 554, in Cabell county, West Virginia, which was not heretofore deeded by said Laidley to said Huntington, and described as follows: On the east by Wm. P. Holderby; on the south by the C. & O. railroad, as at present located; on west by lands of s'd Huntington, formerly Poage; on the north by said Huntington, formerly Wm. P. Holderby; containing forty acres more or less.

Ninth. All that certain lot, piece or parcel of land which, in a certain deed executed by William P. Holderby to said C. P. Huntington, dated March 1st, 1871, recorded in said recorder's office, March 6, 1871, in Deed Book C, page 103, is bounded and described as follows, to wit:

A lot of land situate near the Ohio river, in Cabell county, West Virginia, and containing four acres of land, and including the brick

dwelling-house and other buildings of the said party of the first part; the same the exact parcel that was reserved in a previous grant of about one hundred and twenty-four acres, made to Albert Laidley, and described therein as a reservation of four acres, with all the privileges and appurtenances thereof.

Tenth. All that certain tract of land which, in a certain deed executed by Elisha T. Mitchell and Elizabeth M., his wife, to said C. P. Huntington, dated April 21st, 1871, recorded in the recorder's office of said county on the 21st day of April, 1871, in Deed Book C, page 133, is bounded and described as follows, to wit: "All that certain piece or parcel of land situate in Cabell county, West Virginia, purchased by the party of the first part from Dr. P. H. McCullough and deed for same executed by T. B. Kline, special commissioner, and bounded as follows: On the north by the Ohio river, on the east, south and west by lands of C. P. Huntington, containing four acres of land, be the same more or less."

Eleventh. All that certain tract of land which, in a certain deed executed by William P. Holderby to said C. P. Huntington, dated July 19, 1871, recorded in the recorder's office of said county,
123 on the 20th day of July, 1871, in Deed Book C, page 173, is bounded and described as follows, to wit: A certain tract or parcel of land, situate, lying and being in the county of Cabell, State of West Virginia, containing twenty-eight and one-half ($28\frac{1}{2}$) acres, more or less, and bounded and described as follows: On the easterly side by the lands of Peter C. Buffington and the said C. P. Huntington, on the northerly side by the lands of the State normal school, on the westerly side by the lands of the said C. P. Huntington, and on the southerly side by the lands of the Chesapeake and Ohio Railroad Company, with all and singular the privileges and appurtenances thereunto belonging, together with all rights of reversion, whether the public roads or otherwise, thereof, reserving, nevertheless, from this grant two parcels of land, one containing one and ninety-two one-hundredths (1.92) acres, described as follows in a deed to C. F. Parsons, and now of record in the county of Cabell, to wit: Beginning at a stone in the east line of the lane running from the college to the State road, and in the centre of Sixth avenue, in the city of Huntington; thence east with the centre of Sixth avenue to a stake in the centre of 17th street, and thence south with the centre of said street and with the east line of said lane so as to include one and ninety-two hundredths (1.92) acres, by a parallel line with the centre of said Sixth avenue; the other containing one acre, is situated in the southwest corner of the tract herein conveyed, and is bounded and described as follows, to wit: Beginning at a point thirty feet northerly of the northerly line of the land of the Chesapeake and Ohio Railroad Company, and in the easterly line of the lane running from the college to the State road; running thence N., 14° W., 210 feet to the southerly line of 7th avenue in the city or town of Huntington; thence, along this line N., 76° E., 207.43 feet to a stake twenty feet east of the westerly line of 17th street; thence parallel with the said line of 17th street

S., 14° E. 210 feet to a stake thirty feet northerly of the north-
124 erly line of the land of the Chesapeake and Ohio Railroad Company; thence parallel with the line of said railroad company S., 76° W., 207.43 feet to the place of beginning; it being intended by this grant to convey to the said party of the second part the entire residue of the farm on which the said party of the first part formerly resided, with all the rights and privileges that have hitherto remained vested in the said Holderby, except the above reservations.

Twelfth. All that certain tract of land which, in a certain deed executed by E. S. Holderby and C. A. Holderby, his wife, to said C. P. Huntington, dated the first day of September, 1871, recorded in the recorder's office of said county on the 5th day of September, 1871, in Deed Book C, page 186, is bounded and described as follows, to wit: Beginning at a stake, corner of James H. Poage, standing 50 feet from the center line of the Chesapeake and Ohio railroad; thence N., 76 E., and parallel with said road 1,928 feet to corner of Huntington's land; thence with his line S., 5° 45 E., 1,500 feet to corner of Huntington; thence S., 76 W., and parallel with the railroad 1,560½ feet to James H. Poage's line; thence with Poage's line N., 17° 35′ W., 1,490$_{1}^{6}{}_{0}$ feet to the beginning; excepting and reserving, however, out of the above boundary 16 acres sold and conveyed to C. F. Parsons, and, also, three and ($_{1}^{21}{}_{00}$) twenty-one-hundredths acres sold and conveyed to Joseph and Foster Stewarts and Wm. Pennybacker, leaving, after reserving as above, 40.37 acres, be the same more or less.

Thirteenth. All that certain tract of land which, in a certain deed executed by J. Harvey Poage and Sarah A., his wife, to said C. P. Huntington, dated the 11th day of October, 1871, recorded in the recorder's office of said county on the 12th day of October, 1871, in Deed Book C, page 216, is bounded and described as follows, to wit: Beginning at a stake on the line of the Poage and Hanly farms, being the southwest corner of the land that the said Poage and wife conveyed to A. Laidley; thence N., 76 E., parallel with the
125 Chesapeake and Ohio railroad (1,111) eleven hundred and eleven feet to the northwest corner of land E. S. Holderby conveyed to Huntington; thence S. 18° 53′ E., (772.8) seven hundred and seventy-two and eight-tenths feet to a stake on the south line of Ninth avenue; thence with said south line of Ninth avenue S., 76 W., (1,108) eleven hundred and eight feet to what was formerly the Hanly line; thence with said Hanly line N., 19° 6′ W., (773.06) seven hundred and seventy-three and six-hundredths feet to the beginning, containing nineteen and sixty one-hundredths acres.

Also, all those certain tracts, pieces or parcels of land situate, lying and being in the county of Kanawha and State of West Virginia.

First. All that certain tract of land lying and being in the township of Cabin Creek, in the county and State aforesaid, containing thirty-six and two-thirds acres, and bounded as follows: Beginning where once stood two box elders on the bank of the Kanawha river,

upper corner, to a survey of 400 acres, made for and patented to Andrew Donnelly, and now claimed as the corner between the lands of the Kanawha & Ohio Coal Co. and the land herein granted, and running thence with the line between said lands, the original call of said survey being S., 30 E, 20 poles to a beech at the foot of the hill; thence with the next line of said survey, the call being S., 60 W., 50 poles to a beech and sugar tree; thence with the lines of same till they intersect the line of lands belonging to Henry L. Creary, and with his line to Cabin creek; thence down Cabin creek with its meanders, and binding thereon, to the Kanawha river; thence up said river with its meanders, and binding thereon, to the place of beginning; being the same premises which were conveyed to the said C. P. Huntington by John McConihay by deed dated March 31, 1870, recorded in the recorder's office of said Kanawha county April 1st, 1870, in Deed Book No. 26, page 274.

Second. All the following property, to wit: A tract of land
126 lying on the south side of Kanawha river, adjoining the lands of William Bradford on the lower side, and the lands of John McConahay on the upper side, and known as the Burke & Lewis or "Burke place," containing by survey 149 acres 2 roods and 14 perches of bottom land, and 68 acres of hillside, being the same land assigned to the devisees of Col. William Dickinson in the division of the bottom lands of the late firm of Dickinson & Shrewsberry, as will appear by the report of Commissioners John L. Cole, M. P. Wyatt and Joel Ruffner of record in the recorder's office of Kanawha county, and also filed with the chancery suit of Dickinson *versus* Shrewsberry in the circuit court of Kanawha county. The same lands were subsequently assigned and allotted to H. C. Dickinson and his wife in the division of the lands belonging to the devisees of Col. William Dickinson, as will appear by a deed of record between said devisees, the metes and bounds of which lands are as follows: Beginning at an elm, one live and one dead sycamore, near the river's edge, immediately above the mouth of a drain, corner to said land and the land now owned by William Bradford, and running thence S., 5½ W., 39 poles to a stake on the upper bank of said drain; thence S., 45½, W., crossing the drain at 5 poles 8½ links, and the fence at the road at 13 poles, in all 29 poles, to a stone on the hillside, with a young sycamore and 4 buckeyes as pointers; thence S., 48½ E., crossing Wilmot's branch at 186 poles, in all 208 poles, to a stone on a hillside, corner to Lewis & Burke tracts; thence S., 37½ E., crossing a drain at 168, in all 288 poles, to a stone marked "D. S.," also a buckeye, ash and birch, a double poplar, a dogwood and ironwood marked as pointers, corner to John McConahay's land; thence with his line N., 51° E., crossing N. E. side of road and stone pile at 55 poles, in all 112 poles, to a locust on the Kanawha River bank in a fence row; thence leaving the said McConahay's line and running down the river and binding thereon at low-water mark to the beginning corner.

Also, three lots, being parts of an island in Kanawha river
127 known as Witcher's Creek island, the said three lots being numbered 2, 6 and 7 in the partition of the real estate of

Henry Hannan, dec'd, which contain together 2 acres, 1 rood and 19 perches, and were assigned by metes and bounds to the devisees of Col. William Dickinson in the before-mentioned partition of the bottom lands of Dickinson & Shrewsberry, and subsequently assigned to the grantors in this deed in the partition of the lands of Col. William Dickinson, to which reference is hereby had for a fuller description thereof.

Also, a tract of land near to and separated from the before-mentioned "Burke place" by a small tract of land known as McConahay's Hannan lot, which land so sold is known as Dickinson & Shrewsberry's "Hannan lot," was sold by the heirs of Henry Hannan to Samuel Burke, and by him to Dickinson & Shrewsberry, and in the before-mentioned partition of the bottom lands of Dickinson & Shrewsberry was assigned to the devisees, Joel Shrewsberry, and in the partition of the lands of Joel Shrewsberry subsequently among his devisees was allotted and assigned to Mrs. Caroline Quarrier. The same land was, to wit, on the — day of ——, 186–, conveyed and transferred to Samuel A. Miller as trustee for his wife, Helen Q. Miller, and has been by deed of this date conveyed and sold by said Miller, trustee, and the same Miller and wife to the said H. C. Dickinson; all of which will appear by the said several deeds of record in Kanawha county; which said lands, containing 24 acres of bottom and 15 acres of hill land, is more particularly described as follows: Beginning at a stone marked "D. S." near the upper corner of a newly enclosed field—original corner in the division of the Hannan lands—and running N. 51° 20′, crossing Field's creek at 58 poles, passing an apple tree marked "I" an· "=" on the other side at 86 poles and 20 links, crossing the creek again at from 102 to 106 poles, in all 112 poles, to a hickory on top of the bank, original corner in the division between lots No. 6 and 7; thence down the river with its meanders and binding thereon at low-water mark to a stake at the end of a fence row, corner to said lot and John McCon-
128 ahay's Hannan lot; thence with the line between said lots and fence S., 51° 25′ W., crossing the country road at 68 poles, in all 118 poles, to a stone marked "$\frac{D}{M}$ S." on the back line of the Preston survey; thence with same S., 37½ E., 59 poles to the beginning.

Also, another tract of land back and adjoining the "Burke" or "Burke & Lewis place," containing by survey 377¾ acres, the same being the interest of the devisees of Col. William Dickinson and Joel Shrewsberry, in a tract of mountain land containing 1,700 acres, lately owned by John McConihay, Grant's heirs, Herrick Dickinson and Shrewsberry and the children of Mrs. Amelia Bradford, which said interest so owned by the devisees of Dickinson & Shrewsberry at this time is more particularly described and set out in the proceedings of a chancery suit lately pending in the circuit court of Kanawha county for the division and partition thereof, in the name of Dickinson and Shrewsberry *vs.* John McConahay and others, to which reference is hereby had for a full and minute description hereof; being the same premises which were conveyed to said C. P. Huntington by Henry C. Dickinson and Sally J., his wife

by deed dated June 23, 1870, recorded in the recorder's office of said Kanawha county June 25, 1870, in Deed Book 27½, page No. 57, and subject to the reservations and covenants contained in said deed.

Third. All that certain tract of land, containing one hundred and seventy-one acres, more or less, situate in said Kanawha county, known as the Cottage farm, and generally described as follows: Commencing at a sycamore tree on the bank of Coal river, corner to George Washington survey and to farm of J. F. Hansford; thence with said Hansford's line to a stake on the bank of the Kanawha river; thence down said river and binding thereon to stake, corner of J. S. Cunningham; thence with said Cunningham's line to stake in said line and corner to Jos. S. Simms; and thence with said Simms' line to stake in said line and corner to J. S. Cunning-
129 ham; and thence with said Cunningham's line to Coal river, corner of said Cunningham; and thence up said river and binding on the same to the place of beginning; being the same premises which were conveyed to the said C. P. Huntington by Mrs. Elizabeth H. Thompson by deed dated July 26th, 1870, recorded in the recorder's office of said Kanawaha county, August 17th, 1870, in Deed Book No. 27½, page 78.

Fourth. All that certain piece of land situate in St. Albans, in said county and State, bounded and described as follows, viz: Beginning at a stone on the upper side of the James river and Kanawha turnpike, leading from St. Albans to Charleston, it being a corner to Mrs. Helen M. Cunningham's land; thence with a line thereof (1) S. 0° 30′ W., 80 poles to a stone, another corner to the same; (2) thence S., 60° 45′ E., 84⅖ poles to a stone, corner to Joseph Y. Simms' and in line with C. P. Huntington's (formerly Mrs. Elizabeth H. Thompson's) land; (3) thence with a line of the last named S., 8° 30′ E., 122½ poles to a cross and hole marked with a hatchet on a rock on the edge of Coal river; thence down the river and binding thereon at low water, the following courses and distances, viz: (4) N., 43 W., 28 poles; (5) N., 49° 30′ W., 18 poles; (6) N., 60° W., 27 poles; (7) N., 58° 30′ W., 130 poles, passing the upper end of lock No. 1 at 42 poles, passing the lower end of the same at 55 poles, to a stake near a sycamore tree; (8) N., 65° W., 20 poles; (9) N., 22° W., 23½ poles; (10) N., 5° 45′ W., 30 poles; (11) north, 24 poles; (12) N., 4° 30′ W., 50 poles to a stake, thence leaving Coal river and running back to the town lots of I. Lasley and others; (13) S., 87½° E., 27⅘ poles to a stake; (14) N., 1½° E., 11 poles to a stake; (15) S., 87½ E., 11 4/10 poles to a stake; (16) N. 1½° E., 9 poles with the garden fence of Mrs. Mary Hudson to the James River and Kanawha turnpike; (17) thence with said turnpike S., 87½° E., 9 1/10 poles to a stake; (18) thence north, 152 3/5 poles to a stone on the south side of the Kanawha river at low-water mark; (19) thence up said river with its meanders and binding thereon the following
130 courses and distances, viz: S., 57° E., 40⅖ poles to a stake; (20) S., 61° E., 30 poles to a stake; (21) S., 67° E., 40 poles; (22) S., 71¾ E., 19⅗ poles to a maple corner to the land of C. P. Huntington (formerly Mrs. E. H. Thompson); (23) thence leaving

the river and with a line thereof S., 0° 30′ W., 131 poles to a stake corner to J. T. Simms' one-acre lot below the turnpike; (24) thence with a line of the same N., 89° 10′ W., $11\frac{3}{25}$ poles to another corner to same; (25) thence with another line of the same, 0° 50′ W., $17\frac{1}{5}$ poles, passing through Simms' barn about the centre, and crossing the James River and Kanawha turnpike to the upper side thereof to a line of said J. T. Simms' 19-acre lot; (26) with a line of said lot, and with a line of Mrs. H. M. Cunningham's land N., 60° 45′ W., $47\frac{1}{25}$ poles to the beginning, containing $258\frac{3}{4}$ acres of land, a plot whereof is annexed to a deed made by John S. Cunningham and Helen M., his wife, to said C. P. Huntington, dated May 9, 1871, recorded with the said plot in the recorder's office of said Kanawha county, May 16, 1871, in vol. $27\frac{1}{2}$, page 125, &c., being the same premises conveyed by said deed, and subject to the reservations therein contained, and noted on said plot.

And also all contracts or title bonds for the sales of lands in the county of Cabell, West Virginia, which have been heretofore signed to the said C. P. Huntington, and the deeds of which have not yet been given.

[$600 revenue stamps, canceled.]
[United States internal-revenue $200.00 stamp.]
[United States internal-revenue $200.00 stamp.]
[United States internal-revenue $200.00 stamp.]

Together with all and singular the tenements, hereditaments and appurtenances to the said several tracts or parcels of land belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever, as well as in law as in equity, of the said parties of the first part, of, in or 131 to the above-described premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, its heirs, successors and assigns, forever. And the said C. P. Huntington doth hereby covenant with the said party of the second part that he will warrant specially the property hereby conveyed.

Witness the following signatures and seals:

C. P. HUNTINGTON. [SEAL.]
E. S. HUNTINGTON. [SEAL.]

Sealed and delivered in presence of—
JAS. H. STORRS.
CHARLES NETTLETON.

STATE OF NEW YORK,
City, County, and State of New York, } *To wit, ss:*

I, Charles Nettleton, a commissioner appointed by the governor of the State of West Virginia for the State of New York, do certify that Collis P. Huntington, whose name is signed to the foregoing

instrument, bearing date on the sixteenth day of October, A. D. one thousand eight hundred and seventy-one, has acknowledged the same before me in my State aforesaid.

Given under my hand and official seal this 16th day of October, A. D. 1870.

CHARLES NETTLETON,
[SEAL.] *Commissioner for West Virginia in New York,* 117 *Broadway, New York City.*

132 STATE OF NEW YORK, *City and County of New York,* } *To wit, ss:*

I, Charles Nettleton, a commissioner appointed by the governor of the State of West Virginia for the State of New York, do certify that Elizabeth S. Huntington, the wife of Collis P. Huntington, whose name is signed to the foregoing instrument, bearing date on the sixteenth day of October, A. D. one thousand eight hundred and seventy-one, personally appeared before me in the county and State aforesaid, and, being examined by me privately and apart from her husband and having the instrument aforesaid fully explained to her, she acknowledged the said instrument to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand and official seal this 16th day of October, A. D. 1871.

{Seal Charles Nettleton, Commissioner for West Virginia in New York.}

CHARLES NETTLETON,
Commissioner for West Virginia in New York,
117 *Broadway, New York City.*

RECORDER'S OFFICE, CABELL COUNTY,
WEST VIRGINIA, *December 6th,* 1871.

This deed from Collis P. Huntington and wife to the Central Land Company of West Virginia, with United States revenue stamps thereon for six hundred ($600) dollars, was this day presented in this office, and, together with the certificates thereon endorsed, admitted to record.

Teste: T. J. HAYSLIP, *Recorder,*
By THOS. J. F. HAYSLIP, *Dept.*

133 EXHIBIT E.

At a circuit court of the United States for the district of West Virginia, held at Parkersburg, on Tuesday, December 16th, 1890—at chambers.

C. P. HUNTINGTON ET ALS.
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Chancery.

This day this cause came on before the Honorable John J. Jackson, judge of the district court of the United States for the district

of West Virginia, and, as such, one of the judges of the circuit court of the United States for the said district of West Virginia, in vacation, in chambers, at the United States court-room, in Parkersburg, West Va., for hearing upon the application of C. P. Huntington, A. A. Low, Josiah A. Low, Richard Irvin, Edward H. R. Lyman and Isaac E. Gates, plaintiffs, against the Central Land Company, for the appointment of a receiver to take possession of the property of the said company, as prayed for in their bill heretofore filed; and this being the day set for the hearing of said application, and it appearing from affidavit filed that notice of the time and place of such application had been mailed to all of the stockholders of the company, and from the receipts for such notices and the acceptances of service, which are here filed, all the stockholders had had due notice of the time and place of making such application for a permanent receiver, and it appearing to the undersigned judge that the process issued in this cause has been duly served upon the defendant The Central Land Company of West Virginia, and the
134 said defendant The Central Land Company of West Virginia, now appearing hereto by B. W. Foster, its general superintendent and agent, and assenting to the entering of this order, and there being no objection to such application on the part of any stockholder or other party in interest, and the plaintiffs representing more than one-third of all the stock of such company, now asking for the appointment of a permanent receiver:

It is ordered that Collis P. Huntington be, and he is hereby, appointed a special receiver of this court, with power, and he is hereby so authorized, empowered and directed to take possession of all the property belonging to the Central Land Company of West Virginia, and especially of the tract of 240 acres of land known as lot No. 4 of the Frampton land, sold by S. H. G. Pennybacker to C. P. Huntington, and by him to the Central Land Company, in the corporate limits of the city of Huntington. And F. B. Enslow, special receiver, having filed his report showing that on the 12th day of November, 1890, he took possession of all the real estate of said company, including said 240-acres tract, he is directed to deliver same to said Collis P. Huntington, as such receiver, and upon such delivery said special receiver is discharged from further action under the decree of this court of November 11th, 1890, and the defendant, The Central Land Company, its agents and servants, are hereby directed to turn over to Collis P. Huntington all books, papers and accounts relating to said company, its business and affairs, and to deliver to him all notes, deeds, bonds, securities, evidences of debts, and all property, evidences of property, held by said company, and to pay over to said receiver all money and moneys now on hand belonging to said company.

And said receiver is hereby directed to make report to the next term of this court showing what real estate and other property came to his hands.

But this order is not to take effect until said Collis P. Huntington shall give bond as such receiver in the penalty of two
135 hundred thousand ($200,000.00) dollars, with security to be approved by one of the judges of this court, conditioned for

the faithful performance of his trust, and for paying off and accounting for according to law all such money and monies as may come into his hands, and for the faithful compliance with all orders of the court made and to be made in reference to the handling, disposition and control of the bonds, stocks, certificates, evidences of debt and property that may come into his hands as such receiver. And it is further ordered that the said C. P. Huntington may execute said bond and give such security before any judge of the United States circuit court for the southern district of New York, which bond is to be approved by one of the judges of this court.

And, for the purpose of carrying out the requirements of the said bill and winding up the business of the said defendant corporation, the said receiver is hereby authorized to collect the debts due it by suits or otherwise; and, in order to carry into effect the foregoing directions and requirements and to wind up the business of said defendant company, said receiver, by himself, his agent, servant or attorneys, is hereby authorized and empowered to do and perform any and all acts necessary to carry the same into effect in the same and as full a manner as the said company could do through its officers, agents and servants. But he shall report annually, unless otherwise ordered, to this court his action hereunder. But the said receiver under this order is not to sell or convey any of the real estate of the defendant company until the further order of this court in term time, except that such special receiver is authorized to complete any contracts heretofore made by the said defendant company of any of its real estate; and, upon the payment to him of the purchase-money and the execution of any notes for the deferred payments according to the contract of sale, then said special receiver is hereby authorized and empowered, for and on behalf of the said company, to execute fit and proper deed for said land or lots
136 so sold, conveying all interest of the said company to said purchasers as provided for in their contracts of purchase.

(Signed) J. J. JACKSON,
Judge D. C. U. S., D. W. Va.

Dec. 16th, 1890.

Attest:
L. B. DELLICKER, *Clerk.*

EXHIBIT F.

This deed, made this 26th day of Jan'y, 1882, between Sarah H. G. Pennybacker, of the first part, and John B. Laidley, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of five hundred dollars, the receipt whereof is hereby acknowledged, does grant unto the party of the second part, and doth bargain, sell and convey unto him all that certain tract of land situate in the city of Huntington, county of Cabell, and State of West Virginia, containing 240 acres, known as lot No. 4, in the partition of the estate of Isaac Frampton, Jr., deceased, and conveyed

to the said Sarah H. G. Pennybacker by Rebecca J. Everett by deed bearing date the 18th day of August, A. D. 1865, and recorded in the county court clerk's office of Cabell county, Deed Book (A), page 236; for further description reference is made to said deed. Reserving one acre, including the brick house on Fifth avenue. And the said party of the first part does hereby covenant with the party of the second part that she will warrant generally the property hereby conveyed.

Witness the following signature and seal:

S. H. G. PENNYBACKER. [SEAL.]

137 STATE OF WEST VIRGINIA, } *ss:*
Cabell County, }

I, F. F. McCullough, a notary public in and for the county aforesaid, do certify that S. H. Pennybacker, whose name is signed to the writing above, bearing date on the 26th day of January, 1882, has this day acknowledged the same before me in my said county.

Given under my hand this 26th day of January, 1882.

F. F. McCULLOUGH,
Notary Public, Cabell Co., W. Va.

STATE OF WEST VIRGINIA:

In the clerk's office of the county court of Cabell county, in the State aforesaid.

This deed from S. H. G. Pennybacker to John B. Laidley, bearing date the 26th day of January, 1882, was this day presented to me, the clerk of the county court aforesaid, and the same, together with the certificate of acknowledgment thereon endorsed, is admitted to record in my office aforesaid.

Given under my hand this 26th day of January, 1882, at 9 o'clock and 30 minutes p. m.

M. S. THORNBURG,
Clerk Cabell County Court.

138 EXHIBIT G.

To the Hon. C. W. Smith, judge of the circuit — of Cabell Co., West Va.:

The bill of complaint of Sarah H. Pennybacker against John M. Pennybacker, T. J. Hayslip, trustee, and H. J. Samuels, George Rowland, Samuel Hupp, Wm. H. Pennybacker, J. S. Pennybacker and James Pennybacker and David Harsbarger.

The plaintiff complains and says that on the 28th day of June, 1860, she was married to the said John M. Pennybacker; that after that time, her father, Henry H. Owings, settled upon her a farm in the county of Cabell, by deed bearing date August 18th, 1865, executed by R. J. Everett to the complainant, which is herewith filed, marked "A," as a part of this bill; that afterwards, upon the death

of her father, she became possessed of the further sum of $2,000, all of which she held in her own right and free from the debts or control of her husband; that afterwards, on the 25th day of Feb'y, 1870, she sold the said Everett farm to C. P. Huntington for $11,000, as will be seen by deed herewith filed, marked "B," as part of this bill; that the said John M. Pennybacker then collected this said sum of $11,000 for the purpose of investing the same for the benefit of said complainant, according to her directions; but instead of so doing proceeded, without her knowledge or consent, to invest the same for his own benefit and use and in his own name; that with a portion of this $11,000 the said John M. Pennybacker purchased of one Larkin Noel a certain tract of land in the said county of Cabell, and took therefor a deed to himself, which is herewith filed, marked "C," as a part of this bill, and particularly referred to for description of the premises herein referred to; that afterwards, with another portion of this fund, he, in connection with one E. T. Mitchell, purchased another farm of one Jacobs in like manner, as will
139 be seen by the deed herewith filed, marked "D," as part of this bill; that besides these investments he loaned or invested to or with Samuel Hupp about $2,000 of said money, and to Wm. H. Pennybacker about $1,400, and to J. S. Pennybacker about $400, and to James Pennybacker about $300. The plaintiff avers that each of these parties knew to whom this money belonged and how the said John M. Pennybacker came into possession thereof; that afterwards on the 20th day of July, 1871, the said John M. Pennybacker executed to the said T. J. Hayslip, trustee, a deed of trust upon the said Noel farm to secure the said H. J. Samuels the payment of a certain note he held against the said John M. Pennybacker for $951.11, which is herewith filed, marked "E," as part of this bill.

Now, the complainant avers and distinctly charges that the said H. J. Samuels was well and fully acquainted with her claim to and equitable ownership of the said Noel farm at the time he procured the execution of the said deed of trust, and therefore knew that the deed to the said John M. Pennybacker was a fraudulent conversion of the said complainant's funds and rights; that said John M. Pennybacker contracted with the said George Rowland to sell to him the one-half interest above referred to in the Jacobs farm, and took in part payment therefor a bond or note of the said George Rowland for some $700 or $800, which he assigned to the said David Harshbarger as collateral security for one of his individual debts to said Harshbarger. Now, the plaintiff avers that both Rowland and Harshbarger knew the nature of John M. Pennybacker's title to the said land, and that the same had been bought with her money, and was in equity her sole and separate property, and could acquire no rights by their aforesaid transactions. In view of all these facts, and being without remedy save in your honorable court, the complainant prays the said deed of Larkin to Noel—John M. Pennybacker—be set aside, and the lands therein mentioned be conveyed by proper deed to herself; that the deed of Wm. A.
140 Jacobs be set aside and the lands therein mentioned be conveyed to her, along with said Mitchell, and that the sale of

the same to the said Rowland be set aside and she have a decree for her joint possession of the same with the said Mitchell, or, in that failing, that the said Harshbarger be compelled to deliver the above-mentioned note or bond of the said George Rowland to the said complainant; that the said T. J. Hayslip, trustee as aforesaid, and the said H. J. Samuels, beneficiary, under said trust, be restrained and enjoined from selling under said deed, as she is advised they have advertised to do, or from taking any steps whatsoever to enforce the same until her rights thereto have been adjudicated; and that the said Hupp, Wm. H. Pennybacker, J. S. Pennybacker and James Pennybacker be restrained and enjoined from paying over the said monies or any part thereof to the said John M. Pennybacker, and may be required to pay over the — to the said plaintiff, and to that end she asks that it may be referred to one of the commissioners of your honor's court to take and state an acc't with each of the above last-named parties to ascertain how much money they respectively obtained from the said John M. Pennybacker; and that after all these things have been done that she may have a decree against the said John M. Pennybacker for the balance of the $11,000 that may then be found due and unpaid and unaccounted for by the said John M. Pennybacker, and all such other and further relief as your honor may find her entitled to in the premises, and, as in duty bound, &c.

SARAH H. PENNYBACKER.

EUSTACE GIBSON, *Counsel.*

141 STATE OF WEST VIRGINIA, *Cabell County,* } *To wit:*

Sarah H. Pennybacker, the plaintiff named in the foregoing bill, being duly sworn, says that the facts and allegations therein contained, so far as they are stated on her own knowledge, are true, and that so far as they are stated upon information she believes them to be true.

S. H. PENNYBACKER, *Pl'ff.*

Taken, sworn to and subscribed before me this 17th day of July, 1872.

A. J. ENSLOW, *Justice.*

EXHIBIT H.

SARAH PENNYBAKER *vs.* JOHN PENNYBAKER ET AL. } In Chancery.

This cause, coming on this day to be heard on the bill and exhibits therewith filed, and upon argument of counsel and by the consent of the parties, the court doth adjudge, order and decree that all the property, both real and personal, set forth in said bill, except the tract of land known as the Jacobs farm, be conveyed to

the said Sarah H. Pennybaker, free from the debts and control of her husband, the said John M. Pennybaker, but that the said Sarah H. Pennybaker take the Noel farm, subject to the deed of trust held by Thomas J. Hayslip for the benefit of H. J. Samuels upon
142 the said Noel farm, and subject to a deed of trust for the benefit of Albert Laidley upon the same; and that she further secure and pay a balance of two hundred and thirty-five dollars due upon a note for $1,400, executed by the said John M. Pennybaker to David Harshbarger, bearing date March 21st, 1871, with interest thereon from this date; but that the said Sarah H. Pennybaker shall be allowed nine months within which to pay the said Harshbarger debt; and for the purpose of carrying out the object of this decree, the court doth order and adjudge that Eustace Gibson be, and he is hereby appointed, a special commissioner to convey by deed the said property herein adjudged her to the said Sarah H. Pennybaker; and this cause is continued.

Exhibit I.

This deed, made this 20th day of February, 1874, between Sarah H. Pennybacker and John. M. Pennybacker, her husband, of the first part, and Warren J. Parsons, of the second part, witnesseth:

That, for and in consideration of the sum of five thousand and two hundred dollars, the receipt whereof is hereby acknowledged, the party of the first part doth hereby grant unto Warren J. Parsons, party of the second part, a certain lot or parcel of land situate in the city of Huntington, county of Cabell and State of West Virginia, containing one acre, and more particularly described in a deed of the party of the first part to C. P. Huntington, on file in the clerk's office of the county court of Cabell county, as reservation of one acre of land at the corner of the field where the lane and turnpike road intersect and whereon a grocery storehouse stands. Beginning at a stake on the side of the turnpike road and the west side of Beuhring's lane on my line; thence with the turnpike two hundred and ten feet to a stake: thence S., 19° E., two hundred
143 and ten feet to a stake; thence east and parallel with said turnpike two hundred and ten feet to a stake; thence with said line N., 19° W., two hundred and ten feet to the beginning; with all the rights and privileges of said reservation or appertaining to said lot of land, together with all buildings thereon. To have and to hold the same to himself, heirs and assigns forever. The party of the first part hereby warrant generally the property herein conveyed.

Witness the following signatures and seals the day and year first above written.

S. H. PENNYBACKER. [SEAL.]
J. M. PENNYBACKER. [SEAL.]

STATE OF WEST VIRGINIA, } *To wit:*
Cabell County, }

I, H. C. Simms, a notary public in and for the county and State aforesaid, do hereby certify that S. H. Pennybacker and J. M. Pennybacker, whose names are signed to the writing above, bearing date the 20th day of February, 1874, have this day acknowledged the same before me in my said county, and I do further certify that S. H. Pennybacker, the wife — J. M. Pennybacker, whose names are signed to the writing above, bearing date the 20th day of February, 1874, personally appeared before me in my county aforesaid, and, being examined by me privily and apart from her husband and having said writing fully explained to her, she, the said S. H. Pennybacker, acknowledged the said writing to be her act and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 20 day of February, 1874.

H. C. SIMMS,
Notary Public.

144 STATE OF WEST VIRGINIA, } *ss:*
Cabell County, }

In the clerk's office of the county court of said county.

This deed from S. H. Pennybacker and J. M. Pennybacker to Warren J. Parsons, bearing date on the 20th day of February, 1874, was this day presented to me, the clerk of the county court of said county. The same, together with the certificate of acknowledgment thereon endorsed, is admitted to record.

Given under my hand this 17 day of April, 1874.

JOS. S. MILLER, *Clerk.*

EXHIBIT K.

The bill of complaint of the Central Land Company of West Virginia, filed in the circuit court of the United States for West Va., against John B. Laidley, defendant.

Your petitioner, The Central Land Company, of West Virginia, a corporation existing under and by virtue of the statutes of West Virginia, complaining, says that on the 18th day of August, 1865, Sarah H. G. Pennybacker, the wife of John M. Pennybacker, purchased of Rebecca J. Everett, a tract of land, lying in the county of Cabell, and State of West Virginia, containing two hundred and forty acres, and known as lot No. 4, in the partition of the estate of Isaac Frampton, Jr., deceased, for the sum of $8,000, a copy of the deed from said Everett to said Sarah H. G. Pennybacker, is filed herewith as Exhibit "A," and asked to be read as a part hereof, and on the 25th day of February, 1870, before any railroad had been completed from Richmond, Virginia, to the Ohio river at the point where the city of Huntington now stands, and
145 before any city had been built there; the said Sarah H. G. Pennybacker and her husband for the sum of $11,000, cash

in hand, sold said tract of land, excepting one acre, as set out in the deed hereinafter mentioned, to C. P. Huntington, and executed and delivered to him a good and sufficient deed under the laws as they then stood for said tract. A copy of which deed is filed herewith, with the certificate thereon as Exhibit "B," as a part of this bill. The said C. P. Huntington was given possession of said tract by the said Sarah, so sold to him, and the said Huntington afterwards on the 16th day of October, 1871, for a valuable consideration, conveyed the same tract to your petitioner or complainant, who took possession of the same, and at the same time having purchased other large tracts of said Huntington, contiguous and in the vicinity of said tract, it laid them all off in town lots, streets, avenues and alleys and had the place incorporated under the laws of said State as the "City of Huntington," and it placed said lots on sale by its agents, and a large number of lots were sold in the years between 1871 and 1882. Until in the year 1881 the said city had about four thousand people or inhabitants. Some twenty-two persons had purchased lots of said company that were in said tract known as lot No. 4, and built houses and residences upon the same, and the Chesapeake and Ohio Railroad Company purchased of said land company two rights of way across said tract, one near the centre of said tract, and one on the Ohio River front, and built its railway across the same at both of the places mentioned. During the time the said lots and pieces of land were being sold and the said purchasers were building houses and residences thereon, and the said railway was being built, upon the said tract, the said Sarah H. G. Pennybacker was living in said city or in the immediate vicinity, and had notice and knew that the parties were so buying and building upon said tract, and believing themselves to be the owners in fee-simple of the lots so purchased.

146 In the winter of 1881, after the death of John M. Pennybacker, the husband of said Sarah, John B. Laidley, a practicing attorney in the courts of West Virginia, voluntarily went to said Sarah, and told her, as she claims, that, under the new constitution of West Virginia, she had dower in the tract of land she had sold to C. P. Huntington, and that if she would let him bring a suit he would recover it for her, and they would divide equally what was recovered. At the time he approached her and told her that she had an interest still in the land, he made her promise him, on the "honor of a lady," that she would not consult any other lawyer about the matter. She then and there told said Laidley that she had sold the said tract of land to the said Huntington, and had received the pay for it, and she could not understand how she had any further interest of any kind in the land. She refused to allow the said Laidley to bring any suit in her name to recover dower or any other interest. After repeated efforts to have her bring suit and failing, and still insisting she had a dower, he offered to give her $500 if she would deed the land to him. The said Sarah had no business experience, having before that time relied entirely upon her husband, who was then dead, and being obligated by the said Laidley not to consult any lawyer, and without con-

sulting any lawyer as to the effects of her acts on the 26th day of January, 1882, she executed and delivered to said Laidley a deed for the said tract for the sum of $500, $100 of which he paid in cash, and gave his notes for the balance, payable in one and two years. Soon after procuring said deed, and early in March, 1882, he brought an action against your complainant in the circuit court of Cabell county, West Virginia, to eject it from said tract, which action was finally tried in said circuit court of Cabell county on the 22d day of December, 1884, and resulted in a judgment in favor of your complainant, the defendant therein on the 23d of Octo-
147 ber, 1886. The supreme court of appeals of said State granted said Laidley a "writ of error" to said judgment.

A copy of the printed record in said writ of error in said appellate court is filed herewith as "Exhibit D," and asked to be read as a part hereof. On the 26th day of November, 1887, the said court of appeals reversed the said judgment of the said circuit court, and sent the case back to the said circuit court for a new trial, a copy of the judgment of the said court of appeals, and the written opinion thereon, are made a part hereof, as Exhibit "E," and asked to be read as a part hereof, and afterwards at a circuit court of Cabell county, held on 12th day of September, 1890, there was a trial had of the said ejectment suit before a jury, and a verdict thereon in favor of the plaintiff J. B. Laidley, and a judgment thereon in his favor for the possession of the said tract of land so sued for—which said judgment of the circuit court was made in pursuance of the said judgment of the supreme court of appeals so rendered on the 26th day of November, 1887, as will appear from a duly certified copy from the record from the circuit court of Cabell county, West Virginia, filed herewith, marked "Exhibit F," and prayed to be read as part of this bill.

The complainant now alleges and avers that, at the time C. P. Huntington purchased the said tract of two hundred and forty acres of land in controversy, between this complainant and John B. Laidley, and at the time this complainant purchased the said land from the said C. P. Huntington, as the law of the State of West Virginia then was, as construed, laid down and expounded by the supreme court of Virginia, made before the formation of West Virginia from part of Virginia, and by the supreme court of West Virginia, the said deed from Sarah H. G. Pennybacker and John M. Pennybacker, as then executed and delivered, was and is a valid contract, and passed to said C. P. Huntington a valid title to said land; and, as the law of the State of West Virginia then
148 was, the said deed and possession taken thereunder vested rights in said C. P. Huntington that could not be legally divested by any subsequent decision of the said supreme court of West Virginia changing, by judicial decision, the law of the said State of West Virginia so as to impair the obligations of the contract and rendering null said deed. Complainant further alleges and charges that the decision of the supreme court of appeals of West Virginia, *i. e.*, rendered November 26, 1887, reversing and setting aside the said judgment in action of ejectment and remanding the case to the cir-

cuit court for trial, and the judgment rendered therein on the 12th day of September, 1890, in pursuance thereof, were and are in violation of the Constitution of the United States, which forbids the passing of any law impairing the obligations of contracts, and that the said decisions are, by reason of being an entirely different construction of the law now from what it was at the time the deed was made an impairment of a contract, and that they do and, the holdings and rulings of the courts of the State of West Virginia, do impair, set aside and totally defeat the obligation of the contract made by and between Sarah H. G. Pennybacker and John M. Pennybacker and C. P. Huntington, and affect, impair, set aside and vacate the contract entered into by and between complainant and the said C. P. Huntington, by which he conveyed to complainant the land in question; that being a valid contract when entered into, it could not by a subsequent decision of the supreme court be vacated and the rights vested thereby be annulled, and the entire contract under which the title to the complainant to the entire tract of 240 acres of land vested be impaired and the obligations of this contract annulled. The complainant further says, alleges and charges that at the time the said J. B. Laidley bought the pretended title and right that the said Mrs. Sarah H. G. Pennybacker had in said tract of land and took a deed therefor, dated January 26, 1882, he knew that this complainant was in actual
149 possession of the land in controversy, and that its actual value was at least $75,000; that this complainant with the land in actual possession was claiming the fee-simple title to the said land, and that the said Mrs. Sarah H. G. Pennybacker was not then making, did not make, and actually renounced and disclaimed all intention of making or setting up any claim to the land she had already sold and been paid for and had conveyed to C. P. Huntington as aforesaid. The complainant also alleges that the defendant had full knowledge of the fact that, if the said Sarah H. G. Pennybacker's deed to the said C. P. Huntington was in fact void, that if she did not for two years after her husband's death set up and enforce her claim, that this complainant holding the land in actual possession and claiming it in fee-simple under and by virtue of the deed from C. P. Huntington, would, by the said failure to claim, be, by the lapse of said ten years, *be* actually vested with an indefensible title to the land by occupation and limitations or lapse of time. That, knowing these facts and knowing that the said Mrs. Sarah H. G. Pennybacker would not arrest her title, if any she had to the land, and would by allowing the lapse of time to bar her claim, thus vest complainant with a perfect title. The said J. B. Laidley, defendant, intending to deprive this complainant of its property and to defraud it out of the land, which it had bought and paid for as aforesaid, after said Mrs. Pennybacker had refused to set up, litigate or seek to enforce any claim against this complainant by representing to her that she had only a dower interest which was vested in her by virtue of some supposed change of the law, wrought by the "new constitution," as he termed it, prevailed on her to sell him her interest for $500.

The plaintiff now alleges that the deed of January 26, 1882, to the said J. B. Laidley was, in fact, procured by fraudulent statements and misrepresentations, and that Mrs. Sarah H. G. Pennybacker, when she executed it, intended only to convey to said
150 Laidley such interest as he represented to her she had in said tract of land, and not the fee which she had, as she stated to defendant at the time, already sold complainant. Complainant further says that all the acts and doings of the said John B. Laidley immediately leading up to the purchase of the land from Mrs. Pennybacker in January, 1882, were one and all devised, made, planned and executed by the said Laidley with the intent, on his part, to defraud this, your complainant, and divest it of its property and of the possession thereof; that, in pursuance of that intention, the said Laidley, acting under the decision of the circuit court of Cabell county, made in the action of ejectment, is now about to sue out a writ of possession of and for the said tract of 240 acres of land (except the one acre reserved, as aforesaid), and will, if not restrained by your honor's court, have the possession delivered to him under the said "writ" on the 12th day of November, 1890, and thereby forever deprive your complainant of any right to the said land.

Forasmuch as your complainant is without remedy in the premises, except in a court of equity, where matters of this kind are alone and properly cognizable, it therefore prays that the said John B. Laidley may be made a party defendant to this suit, and be required to answer this bill on oath, and that to that end all necessary writs, orders and processes may issue. And it further prays that the said John B. Laidley, and all others claiming by, through or under the said Laidley, as purchasers or otherwise of said tract of land, may be enjoined, restrained and inhibited from suing out of the office of the circuit court clerk of Cabell county any writ of possession, and that the said John B. Laidley, and all others claiming title to the said land through or by him, may be restrained, enjoined and inhibited from in any manner taking possession of, or in any manner interfering with, the said land or with complainant's possession thereof, and it also prays that the said deed executed by Sarah H. G. Pennybacker to John B. Laidley, dated the said
151 26th day of January, 1882, may be set aside, vacated and annulled, and that the said John B. Laidley, his agents, servants, attorneys, and all others who claim by, through or under him, may be perpetually enjoined from carrying into effect the judgment of the court in the said ejectment suits, and from interfering with your complainant's possession of said land.

And the further prayer of the complainant is, that the said John B. Laidley, and those claiming under him, be inhibited and enjoined from setting up any title to said land, or proceeding to enforce the same against your complainant, for the reason that such proceeding and claim would impair the obligation of the contract under which the complainant holds said land, and would render null and void the laws, rules of decision and adjudications of the highest courts of the State, as well as the State of Virginia, which were in force at the time said contract and deed *was* made, and under which this

complainant claims title, and that all such other further general relief be granted your complainant as the case may require and to equity seem fit, and this your complainant, as in duty bound, will ever pray, &c.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA,
By COUNSEL.

SIMMS & ENSLOW, *Sol.*

STATE OF WEST VIRGINIA, *County of Kanawha,* } *ss:*

This day personally appeared before me the undersigned, L. B. Dellecker, clerk of the United States circuit court for the district of West Virginia, H. C. Simms, who, being duly sworn, says that he is an attorney for the Central Land Company, and that he is
152 personally acquainted with the facts set out in the foregoing, and that, when they are stated therein, as on the knowledge of the complainant, are true, and when stated on information, he believes them to be true.

H. C. SIMMS.

Taken, sworn to and subscribed before me in my county this 11th day of November, 1890.

L. B. DELLECKER,
Clerk C. C. U. S., D. W. Va.

At a circuit court of the United States for the district of West Virginia, held at Parkersburg on Tuesday, Novem- 11th, 1890. In chambers.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA *vs.* JOHN B. LAIDLEY. } In Chancery.

This 11th day of November, 1890, came the Central Land Company, a corporation, by Simms and Enslow, its attorneys, and presented its bill to the undersigned judge of the district court of the United States for the district of West Virginia, among other things praying an injunction against John B. Laidley, enjoining him, his agents, servants and attorneys, from suing out a writ of possession in the ejectment suit of John B. Laidley *vs.* The Central Land Company of West Virginia, in the circuit court of Cabell county, and from in anywise taking possession of the tract of land set out
153 and described in the plaintiff's bill, known as lot No. 4 in the partition of the estate of Isaac Frampton, Jr., or of any part thereof.

On consideration whereof, the bill is ordered to be filed, and a temporary injunction is allowed as prayed for, restraining and inhibiting John B. Laidley, his agents, servants, and attorneys, and all others acting for and under him, or in interest with him, from

suing out or obtaining a writ of possession from the clerk of the circuit court of Cabell county in the action of ejectment of John B. Laidley against The Central Land Company of West Virginia, instituted for the recovery of the possession of the property set out and described in the plaintiff's bill, or from taking possession in anywise of the same, or of any portion of the same. No bond is required at this time of complainants, but this cause is set down for hearing upon the motion for a permanent injunction on the 16th day of December, 1890, at the United States court-room, in Parkersburg, West Virginia.

(Signed) J. J. JACKSON,
Judge D. C. U. S., D. W. Va.

Attest: L. B. DELLICKER, *Clerk.*

154 At a circuit court of the United States for the district of West Virginia, held at Parkersburg on Tuesday, December 16th, 1890. At chambers.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY. } In Chancery.

The parties to this suit having stipulated in writing that the preliminary injunction heretofore awarded in this suit, and which was set down for a hearing at chambers, in the city of Parkersburg, West Virginia, on the 16th day of December, 1890, which stipulation was signed by counsel both for plaintiff and the defendant, should be continued until the next term of the court in course, and said preliminary injunction remain in full force and effect until that time.

It is therefore ordered, in pursuance of said stipulation, that the motion and hearing set down for this day be, and the same is hereby, continued until the 1st day of the next term of this court; and it is further ordered that the injunction awarded in this cause on the 11th day of November, 1890, be, and the same is hereby, continued in full force and effect until the next term of this court.

Done in chambers in the city of Parkersburg, West Virginia, this the 16th day of December, 1890.

(Signed) J. J. JACKSON,
Judge D. C. U. S., D. W. Va.

Attest: L. B. DELLICKER, *Clerk.*

155 At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg on the 6th day of February, 1891.

Present: Honorable John J. Jackson, judge.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY. } In Chancery.

Upon motion of the plaintiff it is ordered that the temporary injunction heretofore awarded herein against the defendant be, and

the same is hereby, continued in full force and effect until the further order of this court.

(A copy.)

Attest: L. B. DELLICKER, *Clerk.*

156 EXHIBIT L.

John B. Laidley to W. S. Laidley. } Deed.

This deed, made this 5th day of August, 1889, between John B. Laidley of the first part and W. S. Laidley, trustee, of the other part, witnesseth, that the said John B. Laidley, for and in consideration of the sum of one dollar in hand paid by said W. S. Laidley to the said John B. Laidley, the receipt whereof is hereby acknowledged, and for other valuable considerations moving from said W. S. Laidley, doth hereby give, grant, sell and hereby convey to the said W. S. Laidley the undivided three-fourths (¾) of all my right, title, claim and interest in and to all the real estate in the county of Cabell and city of Huntington, owned and claimed by me, and which is described in a deed executed by S. H. G. Pennybacker to me, the said John B. Laidley, dated the 26" January, 1882, containing about 240 acres, more or less, to which deed reference is here made for a more particular description of the property hereby conveyed.

In trust to sell and convey any or all of the said property hereby conveyed, or to mortgage or convey in trust any part thereof, or all thereof, and by his deed to convey the title hereby conveyed.

And then first for the support and maintenance of Vesta Laidley and Alberta Laidley during their natural lives, then for the support of Jennie Laidley and her children, Robert and Jean, not exceeding two hundred dollars per annum, until the said children are twenty-one years of age, and a fund shall be raised and set apart to
157 satisfy and pay the aforesaid annuities and maintenance herein mentioned, the amount to be paid for the support of the said Vesta and Alberta not to exceed $800 per annum. But before any sum is to be paid by said trustee hereunder, he shall pay off and discharge all debts that I now owe, or any liabilities that I am now liable for, and the remainder shall be disposed of by said trustee as he and the said grantor shall together direct and agree upon, and, in the event of a failure to make such disposition, then the same shall go as by the will of the said grantor he may direct. The said trustee shall be allowed ten per cent. of all moneys that shall come into his hand, as such trustee, as compensation for his services hereunder, also costs & expenses. All powers heretofore granted and made in relation to the property hereby conveyed are hereby revoked and annulled. And the property hereby conveyed is hereby conveyed with covenants of general warranty.

Witness the following signature and seal.

JOHN B. LAIDLEY. [SEAL.]

I certify that the words "the undivided three-fourths of" were interlined before signing and acknowledgment.

A. G. TEBBETTS, *N. P.*

STATE OF WEST VIRGINIA, }
Kanawha County, } *ss:*

I, A. G. Tebbetts, a notary public in and for the county and State aforesaid, do certify that John B. Laidley, whose name is signed to the writing above bearing date on the 5th day of August, 1889, has this day acknowledged the same before me in my said county.

Given under my hand this 5th day of August, 1889.

A. G. TEBBETTS,
N. P. in and for Kanawha Co., W. Va.

158 STATE OF WEST VIRGINIA, }
Cabell County Court Clerk's Office. }

This deed, from John B. Laidley to W. S. Laidley, trustee, bearing date the 5th day of August, 1889, was this day presented to me, the clerk of said court, and the same, together with the certificate of acknowledgment thereon endorsed, is duly admitted to record.

Given under my hand this 8th day of November, 1889, at 11 o'clock and 30 minutes a. m.

F. F. McCULLOUGH,
Clerk of Cabell County Court.

EXHIBIT M.

The bill of complaint of Vesta Laidley, filed in the circuit court of Cabell county, against C. P. Huntington, Elizabeth Huntington, and the Central Land Company, a corporation created by and under the laws of the State of West Virginia and existing at the city of Huntington, in the county of Cabell and in the State aforesaid.

The complainant avers that she was united in marriage with Albert Laidley on the 30th day of October, 1845; that he departed this life intestate on the 7th day of December, 1876, leaving the plaintiff his widow and two children him surviving; and without making provision for her support other than that provided by law as dower out of his estate. She avers that his entire property, valued at $50,000, was sold for the payment of his debts; that she realized by way of dower out of his said estate less than $3,000, half of which was invested in a homestead, and the other moiety is wholly inadequate for her support, and that she has no separate estate. She says that during the coverture aforesaid said Albert Laidley was seized and possessed in fee of several valuable tracts of land situate in said county, and by him sold and conveyed to the defendant C. P. Huntington, and fully described in the exhibits
filed with this bill marked "A," "B," "C," "D" & "E"
159 respectively. That on the 20th day of October, 1870, the said Albert Laidley conveyed, by two deeds bearing date the day

and year last mentioned, several tracts of land to defendant C. P. Huntington containing in the aggregate eleven hundred and sixty acres, and for the aggregate consideration of seventy-five thousand five hundred and eight dollars. Said deeds are of record in the county court clerk's office of Cabell county in Deed Book "C," folio-1 & 2. Certified copies from said record are herewith filed as exhibits, marked "A" and "B," respectively. That on the 25th day of July, 1870, said Albert Laidley conveyed to said C. P. Huntington, by deed bearing date the day and year last mentioned, several other tracts of land containing in the aggregate eleven hundred and forty-five acres in consideration of sixty-four thousand nine hundred and eighteen dollars. Said deed is of record in the county court clerk's office of Cabell county in Deed Book "B," folio 505, a certified copy from said record thereof is filed with this bill as exhibit marked "C."* Also, a tract containing 240 acres conveyed to C. P. Huntington by J. M. Pennybacker at the request of Albert Laidley in consideration of $11,000, by deed dated Feb. 25th, 1870, a copy is here filed as Exhibit "D," and which said A. Laidley bought of H. G. Pennybacker and J. M. Pennybacker, and by him conveyed by deed below mentioned to said Huntington, together with two other tracts containing respectively 299 and 110 acres conveyed to C. P. Huntington by deed bearing date 13th day of April, 1870, and recorded in Cabell county court clerk's office, Deed Book "B," p. 445, a certified copy of which is herewith filed as Ex. ("E"), all of said deeds (A, B, C & E), contain covenants of general warranty. * * * On the 16th day of October, 1871, the defendants C. P. Huntington and Elizabeth Huntington, his wife, conveyed the several tracts of land aforesaid to the Central Land Company, by deed bearing date the day and year last aforesaid of record in the county clerk's office of Cabell county, Deed Book "C," folio 252,
160 clause- 3, 4, 5, 6, a certified copy of which is here filed as part of this bill as Ex. "F," and the Central Land Company are now in possession, use and enjoyment of said property or the largest portion thereof under and by virtue of the deeds aforesaid.

The plaintiff is advised that she is entitled to have one-third of the lands aforesaid in value assigned to her for her life as dower therein, with an account of the rents and profits thereof since the 7th Dec. 1876. The defendants pretend that the plaintiff united in the execution of the deeds aforesaid, Exs. A, B, C & E, to C. P. Huntington, and thereby extinguished her right of dower in said lands. And refuse to assign her dower in said lands. On the contrary thereof, she is informed and believes, and therefore alleges, that she has never in any manner whatever barred or relinquished her right of dower in said lands; and that she did not join, in the manner prescribed by statute, in the execution of the deeds aforesaid, Exs. (A, B, C & E), or any of them to C. P. Huntington, as she is advised and believes, and therefore alleges; and that the said deeds, Exhibits A, B, C & E, were never admitted to record as to her, and that the pretended certificates annexed thereto were not admitted to record.

She avers that she was born on the 15th day of September, 1823,

and that on the 7th Dec., 1876, at the death of her husband, her age was 53 years 2 months and 22 days; and that she is desirous to have her dower paid her in gross in money in lieu of dower in kind, to be estimated according to law upon the value of said lands at the time of said alienation; and being without remedy at law, she prays that her dower may be assigned her in the said lands, in money as aforesaid; and for such other, further and general relief as in equity she may demand, and will ever pray, &c.

VESTA LAIDLEY,
By COUNSEL.

JOHN B. LAIDLEY, *Sol.*

161 STATE OF WEST VIRGINIA, *Cabell County,* } *To wit:*

Vesta Laidley, the plaintiff named in the foregoing bill, being duly sworn, said that the facts and allegations therein contained, so far as stated upon her own knowledge, are true, and so far as stated upon her information and belief she believes them to be true.

VESTA LAIDLEY.

Taken, sworn to and subscribed before me in my said county this 17th day of Dec'r, 1881.

JNO. W. CHURCH,
Notary Public in and for Cabell Co., W. Va.

STATE OF WEST VIRGINIA, *County of Cabell,* } *To wit:*

Vesta Laidley, the plaintiff in the foregoing bill, being duly sworn, said the facts and allegations contained in the amendment to the foregoing bill endorsed on the margin of the 3d page, so far as stated on her own knowledge, are true; so far as stated upon information, she believes them to be true.

VESTA LAIDLEY.

Taken, sworn to and subscribed before me in my said county this 1st day of Feb'y, 1882.

JNO. W. CHURCH,
A Notary Public in and for Cabell Co., W. Va.

162 Exhibit "A," referred to in the foregoing bill, is in the words and figures following, to wit:

This deed made this 20th day of October, 1870, between Albert Laidley and Vesta, his wife, of the first part, and C. P. Huntington, of the second part, witnesseth; that for and in consideration of the sum of forty-seven thousand and five hundred dollars, the receipt whereof is hereby acknowledged, the said parties of the first part do hereby grant and convey unto the s'd party of the second part that certain tract of land situated in Cabell county, West Virginia, containing four hundred and fifty-six acres, more or less, and

described generally as follows: Beginning at a stake on the Ohio river corner formerly of John N. Buffington and John Laidley, and now of C. P. Huntington and Albert Laidley; thence southerly and with the line of s'd Huntington to the corner of said Huntington, Laidley and P. C. Buffington; thence westerly with the southern line of s'd Laidley tract to the line of the tract formerly owned by Wm. H. Buffington; thence southerly and westerly with the boundary line of said tract to the line of the tract formerly owned by Wm. Paine; thence with the boundary line to the line of P. C. Buffington; thence northerly with the line of said Buffington to the Ohio river; thence easterly and with s'd river to the beginning; saving and excepting four acres of land to be laid off by said Huntington in sixty days, in rectangular form, so as to include the brick dwelling-house now occupied by Mary S. Laidley; so as not to reach within twenty feet of the river bank; and also a life estate during the life of Mary S. Laidley in ten acres, to be laid off within the field now enclosed west of the land, if the field be sufficient; if not, to include said field, and also sufficient to make up the s'd quantity adjoining the said four acres to be laid off by s'd Laidley within sixty days from this date; and also one-half of one acre equilateral and rectangular including the graveyard. Which s'd tract of land is fully described and defined by metes and bounds and abuttals in deed of Wm. S. Laidley and
163 others to Albert Laidley and C. H. Hall and others to same, and of Wm. H. How & wife to same, and the references therein made, now of record in Deed Book "B," pages 550 & 552, and of Cabell county, to which deeds for a specific description hereof reference is here made.

To have and to hold in fee and forever, and the s'd parties of the first part hereby covenant to warrant generally the property herein conveyed. Witness the following signatures and seals the date above written.

ALBERT LAIDLEY. [SEAL.]
VESTA LAIDLEY. [SEAL.]

Stamp 4750 ct.

STATE OF WEST VIRGINIA, *Cabell County,* } *ss*:

I, Joseph S. Miller, a notary public in and for said county, do certify that Albert Laidley and Vesta Laidley, whose names are signed to the writing above, bearing date on the 20th day of October, 1870, have acknowledged the same before me in my county aforesaid; and the said Vesta Laidley, wife of the said Albert Laidley, being by me examined privily and apart from her said husband, and having the writing aforesaid fully explained to her, acknowledged the said writing to be her act and deed, and that she had voluntarily signed the same and declared that she does not wish to retract it. Given under my hand this 21st day of October, 1870.

JOS. S. MILLER,
Notary Public.

164 RECORDER'S OFFICE, } ss:
Cabell County, West Virginia, }

This deed from Albert Laidley to C. P. Huntington was this day presented to me, the recorder of the county and State aforesaid, together with the certificate of acknowledgment thereon endorsed. The same is admitted to record.

Given under my hand this 22nd day of Oct., 1870.

TH. J. HAYSLIP, *Recorder,*
By JNO. W. CHURCH, *Dep't.*

Exhibit "B" referred to in the foregoing bill is in words and figures following, to wit:

This deed made the 20th day of October, 1870, between Albert Laidley and Vesta, his wife, of the first part and C. P. Huntington of the second part, witnesseth, that for and in consideration of the sum of twenty-eight thousand four hundred and eight dollars, the receipt whereof is hereby acknowledged the s'd parties of the first part, doth hereby grant and convey unto the s'd party of the second part, two certain tracts of land situated in Cabell county, West Virginia, and bounded as follows, to wit: One tract beginning at a stake on the Ohio river, corner of C. P. Huntington and Albert Laidley, formerly of C. T. Everett and Jno. M. Hanly; thence southerly and with the line of C. P. Huntington to the southwestern corner of the s'd J. M. Hanly tract; thence easterly and northerly with the boundary lines of s'd tract to the Ohio river; thence westerly and with the Ohio river to the beginning; the said tract containing three hundred acres, more or less. The other tract also situated in s'd county, adjoining the above-described tract,
165 being bounded and described as follows, to wit: Commencing at a stake on the Ohio river in the line of P. C. Buffington and Albert Laidley, formerly Wm. P. Holderby, thence S., 5½° E., 1,173 ft. to the corner of the Marshall College lot; S., 47¾ W., 564 ft. to a stake; S., 51 10′ W., 875½ feet to the northwestern corner of s'd college lot; S., 50 10′ W., 1,343½ — to a stake on the line formerly of J. H. Poage; thence with the line of s'd Poage S., 17¼ E., 1,355 ft. to a stake fifty feet south of the centre line of the Chesapeake and Ohio R. road as at present located; thence parallel with s'd centre line of s'd road S., 77 15′ W., 1,103 ft. to a stake on the line of the tract of land formerly owned by John M. Hanly; thence northerly with the line of said Hanly to the Ohio river; thence easterly with the river to the beginning, containing four hundred and four acres, more or less, saving and reserving from that part of the tract formerly owned by Wm. P. Holderby a lot containing four acres and certain rights of way, fully described in his deed to Albert Laidley of record in Cabell county, as a reservation; and also from that part of the tract formerly owned by Jas. H. Poage four acres described in the reservations made in his deed to Albert Laidley, also of record in Cabell county; and the said party of the first part excepts from his warranty of title a section one hundred feet in width from the south end of the Poage tract, which he only war-

rants specially. To have and to hold unto the s'd C. P. Huntington, in fee and forever. And the said party of the first part covenant to warrant generally, with the exceptions above referred to, the property above conveyed.

Witness the following signatures and seals the date above written.

ALBERT LAIDLEY [SEAL.]
VESTA LAIDLEY. [SEAL.]

The words on first page, "One tract," & on 2nd page, "parallel with s'd centre," and the words "and certain rights of way," were all interlined before signing. (Stamp 2850 ct.)

166 STATE OF WEST VIRGINIA, *Cabell County,* } *ss:*

I, Joseph S. Miller, a notary public in and for said county, do certify that Albert Laidley and Vesta Laidley, whose names are signed to the writing above, bearing date on the 20th day of October, 1870, have acknowledged the same before me in my said county; and the said Vesta Laidley, wife of said Albert Laidley, being by me examined privily and apart from her said husband, and having the writing aforesaid fully explained to her, acknowledged the same to be her act, and declared that she had voluntarily signed the same, and does not wish to retract it; and I do further certify that the interlineations made in said writings were placed thereon before the same was signed and acknowledged by the said parties.

Given under my hand this 21st day of October, 1870.

JOS. S. MILLER,
Notary Public.

RECORDER'S OFFICE, *Cabell County, West Virginia,* } *ss:*

This deed from Albert Laidley and wife to C. P. Huntington was this day presented to me, the recorder of the county and State aforesaid, together with the certificate of acknowledgment thereon endorsed. The same is admitted to record.

Given under my hand this 22nd day of October, 1870.

TH. J. HAYSLIP, *Recorder,*
By JNO. W. CHURCH, *Dept.*

Admitted to record October 22d, 1870.
Tax and fee paid.

JNO. W. CHURCH,
Dep. Recorder.

Recorded in Deed Book C, folio 1.

167 Exhibit "C" referred to in the foregoing bill is in the words and figures following, to wit:

This deed made and entered into this 25th day of July, 1870, between Albert Laidley and Vesta, his wife, of the first part, and C. P. Huntington, of the second part, witnesseth: That for and in con-

sideration of the sum of sixty-four thousand five hundred and eighteen dollars and fifty cents in hand paid, doth hereby grant and convey unto the said party of the second part, three certain parcels of land situate in the county of Cabell, West Virginia, and described as follows, to wit: One containing seven hundred acres, known as the Everett farm, and bounded on the north by the Ohio river, on the west by the lands of C. P. Huntington, on the east by the lands of J. M. Hanly, on the south by the lands of F. D. K. Beuhring and others; the s'd tract being fully described in a deed from T. B. Kline, special com'r, to Albert Laidley, recorded in Deed Book "B," folio 499, Cabell county, W. Va. One other tract containing two hundred and forty-two acres, known as the Ephraim Frampton farm, and described as follows: Bounded on the north by the Ohio river, on the east by the lands of C. P. Huntington, on the west by the lands of Albert Laidley, and on the south by the lands of A. Laidley, and fully described in a deed of E. M. Frampton to A. Laidley, recorded in Deed Book "B," folio 500, Cabell county, W. Va.; excepting from the quantities in said deed a lot of one acre of land conveyed by A. Laidley to Nancy M. Frampton, by deed describing the same and recorded in Deed Book "B," folio 501, Cabell county. And one tract containing two hundred and seven acres and known as the Dr. McCullough land and described as follows: Bounded on the north by the Ohio river, on the east by the lands of A. Laidley, and herein conveyed, on the west by the lands of C. P. Huntington, on the south by Laidley and Huntington, the same being fully described in a deed by T. B. Kline, special com'r, and P. H. McCullough and wife to A. Laidley, excepting
168 two lots of fifty feet in width by one hundred feet in length, reserved in said deed. The said several tracts making in the aggregate eleven hundred and forty-nine acres, of which is excepted and reserved from this grant the lot of one acre above referred to; also the two lots of five thousand feet each above referred to; also a lot of six acres conveyed by A. Laidley and wife to F. D. K. Beuhring by deed recorded in Deed Book "B," folio 503, Cabell county, W. Va., with all the privileges and appurtenances thereof. To have and to hold the above-described lands unto the s'd C. P. Huntington, his heirs, &c., in fee and forever. And the parties of the first part hereby warrant generally the property hereby conveyed. Witness the following signatures and seals the date above written.

[Stamp—$65.00.]

ALBERT LAIDLEY. [SEAL.]
VESTA LAIDLEY. [SEAL.]

STATE OF WEST VIRGINIA, *Cabell County,* } *To wit:*

I, Joseph S. Miller, a notary public of said county, do certify that Albert Laidley and Vesta Laidley, his wife, whose names are signed to the writing above, bearing date on the 25th day of July, 1870, have this day acknowledged the same before me in my said county.

And the said Vesta Laidley, wife of said Albert Laidley, being examined by me privily and apart from her said husband, and having the writing aforesaid fully explained to her, she, the said Vesta Laidley, acknowledged the said writing to be her act, and declared she had willingly executed the same, and does not wish to retract it. Given under my hand this 25th day of July, 1870.

JOS. S. MILLER,
Notary Public.

169 RECORDER'S OFFICE, *Cabell County, West Virginia,* } *ss:*

This deed from Albert Laidley and wife to C. P. Huntington was this day presented to me, the recorder of the county and State aforesaid, together with the certificate of acknowledgement thereon endorsed: The same is admitted to record.

Given under my hand this 25th day of July, 1870.

THOMAS J. HAYSLIP, *Recorder,*
By JNO. W. CHURCH, *Dept.*

[$65 internal-rev. stamp.]

Exhibit "D," referred to in the plaintiff's bill, is in the words and figures following, to wit:

Know all men by these presents that we, John M. Pennybacker and Sarah H. G. Pennybacker, of the county of Cabell and State of West Virginia, parties of the first part, and C. P. Huntington, of the city, county and State of New York, of the second part, witnesseth: That the parties of the first part, in consideration of eleven thousand dollars, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey to the said C. P. Huntington, his heirs and assigns forever, all the certain tract or parcel of land, situate lying and being in the county of Cabell and State of West Virginia, on the Ohio river, about three miles below the mouth of the Guyandotte river, and bounded as follows, to wit: Beginning at a stake, corner of lot No. 3, in the division of the lands of Isaac Frampton, on the Ohio river; S., 19¼ east, 377 poles to a stake, from which a small sycamore stands; S., 1½ east, two poles & three links; N., 70¾ east, one pole and 24 links to a stake, from which the above sycamore bears; N., 30 W., three poles & 7 links, and another bears, 32½° E., 3 poles & 6 links; thence south, 13° east, one hundred
170 and twenty poles to two white oaks; S., 30 W., thirty-six po. to a white oak, among some rocks on a point; S., 70° W., 50 poles to a black oak & white oak, on a point; S., 11½° W., 120 poles to 2 white oaks on a hill; S., 54 E., 62 poles to 2 black oaks; N., 40 E., 150 poles to chestnut oak, near top of ridge; N., 5° W., 180 poles to a white oak & two beeches; N., 21° W., 8 poles to the S. E. corner of the Brown tract; thence N., 19° W., 398 poles to a stake on the Ohio river; S., 73 W., 47 poles and 14 links to the beginning, containing 240 acres, be the same more or less. Subject, however, to a reservation of one acre of land, at the corner of the field where the lane and the turnpike road intersect, and whereon a grocery

storehouse stands; beginning at a stake on the side of the turnpike road, & the west side of Beuhring's lane, on my line; thence with the turnpike, two hundred and ten feet to a stake; thence S., 19 E., 210 feet to a stake; thence east, and parallel with turnpike, 210 feet to a stake in my line; thence with said line, N., 19 W., 210 feet to the beginning. The title of which lands is hereby retained and reserved to said S. H. G. Pennybacker, as if this deed was never made. Also the right to occupy the land for the present year, work the same and apply the crop for his own use, but to allow said Huntington to work on the same for any purpose, in building and completing the Chesapeake and Ohio R. road and its appurtenances; and all the estate, title and interest of the said John M. Pennybacker and Sarah H. G. Pennybacker, either in law or equity of, in and to the said premises; together with all the privileges and appurtenances to the same belonging; and all the rents, issues and profits thereof. To have and to hold the same to the only proper use of the said C. P. Huntington, his heirs and assigns, forever. And the said John M. Pennybacker and Sarah H. G. Pennybacker, for themselves and their heirs, executors and administrators, do hereby covenant with the said C. P. Huntington, his heirs and assigns, that they are
171 the true and lawful owners of the said premises, and have full power to convey the same; that the title so conveyed is clear, free and unencumbered, and, further, that they will generally warrant and defend the same against all claim or claims of all persons whomsoever. In witness whereof, the said John M. Pennybacker and S. H. G. Pennybacker have hereunto set their hands and seals this 25th day of February, in the year of our Lord one thousand eight hundred and seventy.

J. M. PENNYBACKER. [SEAL.]
S. H. PENNYBACKER. [SEAL.]

Signed, executed & acknowledged in presence of us.

——— ———.
——— ———.

[U. S. revenue stamp, eleven dollars $11.00.]

GUYANDOTTE TOWNSHIP, } *ss:*
The State of West Virginia, County of Cabell, }

Be it remembered that, on the 25th day of February, in the year of our Lord one thousand eight hundred and seventy, before me personally came John M. Pennybacker, party and grantor in the foregoing deed, and acknowledged the signing thereof to be his voluntary act and deed for the uses and purposes therein mentioned. In testimony whereof, I have hereunto subscribed my name and affixed my seal on the day and year aforesaid.

THO. J. HAYSLIP, *Recorder.* [SEAL.]

172 STATE OF WEST VIRGINIA, }
County of Cabell. }

Personally came before me, the undersigned recorder of the county and State aforesaid, Sarah H. G. Pennybacker, wife of the above-

mentioned John Pennybacker & party to the foregoing deed, and, being examined by me privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Sarah H. G. Pennybacker, acknowledged that she had willingly signed, sealed and delivered the same and wished not to retract it.

Given under my hand and seal this 25th day of February, 1870.

THO. J. HAYSLIP, *Recorder.* [SEAL.]

RECORDER'S OFFICE, *Cabell County, West Virginia,* } *ss:*

This deed from J. M. Pennybacker & wife to C. P. Huntington was this day presented to me, the recorder of the county and State aforesaid, together with the certificates of acknowledgement thereon endorsed; the same is admitted to record.

Given under my hand this 31st day of March, 1870.

THOS. J. HAYSLIP, *Recorder,*
By TH. J. F. HAYSLIP, *Dept.*

Exhibit "E," referred to in plaintiff's bill, is in the words and figures following, to wit:

This deed, made the 13th day of April, in the year of 1870, between Albert Laidley and Vesta, his wife, of the first part, and C. P. Huntington of the second part, witnesseth: that in consideration of the sum of thirty-six thousand six hundred and seventy-three $\frac{50}{100}$ dollars, the receipt of which is hereby acknowledged, the said party of the first part doth grant unto the said party of the second part all of two certain tracts or parcels of land lying and being in the county of Cabell, State of West Virginia, and in the township of Guyandotte, bounded and described as follows, to wit: One tract containing two hundred and ninety-nine acres, bounded and described as follows: Beginning at a stake, northeast corner of S. W. Johnston's land, and running with the upper line thereof S., 20¾ E., 308½, to a stake; thence N., 80 W., 3 poles and 18 links to a stone; thence S., 75° W., 115 p. to a stone near a sycamore tree, southwest corner of S. W. Johnston's land; thence S., 21° E., 112 po. to a stake on Watson's line at a dogwood; thence with s'd Watson's line S., 68 W., 60 po. to the dogwood corner; thence S., 21° W., 36 ps. to two wht. oaks, beeches and sugar tree; S., 10 W., 114 p. to three wht. — on a ridge; S., 65 E., 48 poles to two wht. oak; N., 84° E., 46 poles to wht. oak and locust stump; N., 49 E., 160 po. to a bl'k oak and chestnut oak; S., 88° W., 110 p. to a stake from which a black walnut, N., 21½ E., 2 p. and 7 links, and an apple tree, S., 29½ W., 4 p., stands; N., 29 E., 186 p. to a chestnut oak on a little hillside; N., 33° E., 61 po. to two double willows; N., 20° W., 186 po. to a stone; S., 70 W., 25 poles 15 links to a stone; N., 20 W., 25 poles to a stone near the turnpike; N., 70° E., 25 p. and 15 links to a stone, N., 20° W., 121 p. to a stake on the Ohio river; S., 70 W., 53 p. and 16 links to the beginning. It being the same which was conveyed to me on the 22nd day of March, 1870, by deed of John L. Johnston and Mary

173

Jane, his wife, and Wm. L. Johnston and Susan, his wife, by deed recorded in Deed Book " B," page 422, of Cabell county.

One tract containing one hundred and ten acres situate in Cabell county, and bounded on the southeast by F. D. Beuhring; on the east by E. M. Frampton, and on the north by the lands formerly of Wm. L. and J. L. Johnston, and hereinbefore described.

174 And parcel of a certain tract of 800 acres of the s'd Laidley, fully described in a deed of O. A. and E. McGinnis, recorded in Deed Book " J," page 441, of Cabell county—which is to be laid off by the party of the second part, or under his directions, by lines which shall not cross the Porterfield ridge, and the metes, bounds and abuttals so established shall be regarded as the metes, bounds and abuttals intended by this conveyance; but not including one and half acres sold to Sam'l Allen by s'd Laidley; and also his entire interest in a tract of land containing 240 acres, purchased of J. M. Pennybacker and wife by said Laidley, and conveyed, by his directions, to C. P. Huntington—the title to which the s'd Laidley covenants to warrant and defend generally; and the said party of the first part doth hereby covenant with the said party of the second part that he will warrant generally the property hereby conveyed.

Witness the following signatures and seals:

ALBERT LAIDLEY. [SEAL.]
VESTA LAIDLEY. [SEAL.]

STATE OF WEST VIRGINIA, } *To wit:*
Cabell County, }

I, Jno. W. Church, notary public in and for the county and State aforesaid, do certify that Albert Laidley and Vesta Laidley, his wife, whose names are signed to the writing hereto annexed, bearing date on the 13th day of April, 1870, have acknowledged the same before me, in my county aforesaid;

And the said Vesta Laidley being examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said Vesta Laidley, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand this 13th day of April, 1870.

JOHN W. CHURCH,
Notary Public.

STATE OF WEST VIRGINIA, }
Cabell County. }

RECORDER'S OFFICE, *April 16th*, 1870.

The foregoing deed, with U. S. internal-revenue stamps thereon for thirty-seven dollars, was this day presented in said office, and, together with the certificates thereon, admitted to record.

Teste: THO. J. HAYSLIP, *Recorder.*

175 *Subpœna upon Amended Bill.*

UNITED STATES OF AMERICA, *District of West Virginia,* } *ss:*

The President of the United States of America to the marshal of the district of West Virginia, Greeting:

You are commanded to summon John B. Laidley, W. S. Laidley, Thomas J. Bryan, James F. Brown, Mary E. Chilton, William E. Chilton, C. W. Campbell, William Dusty, F. L. Doolittle, R. A. Goodwin, P. Frazier, Edward S. Doolittle, George F. Donnella, James Prichard, C. E. Gwinn, O. E. Gwinn, W. W. Gwinn, W. R. Gunn, Rufus Switzer, Lillie Hanley, Garland Buffington, W. H. H. H. Holswade, George H. Kyle, L. D. Isbell, C. W. Dillon, J. S. Marcum, A. L. Williams, S. R. Hall, Oscar Jones, Miriam Laidley, B. L. Miles, Thomas Miles, Lizzie Montgomery, M. M. Morrison, George E. McDonald, James K. Oney, Gordon O'Bierne, Charles Rose, John Riggs, J. D. Terrell, John T. Wilson, N. Smith, Martha A. Wellman, Sarah H. G. Pennybacker, Thomas H. Harvey, R. T. Harvey, Shelby J. Love, I. Myer, R. K. Price, J. L. M. Curry, Susan A. Remely, C. F. Remely, Michael O'Brien, John O'Brien, James Jasper, Jackson Jasper, George W. Knapp, Margaret Sands, Katherine A. Kneff, Henry Clay Greenwell, William Remeley, Henry Hartman, Wayne Ferguson, all citizens and residents of the district and State of West Virginia; E. M. Mitchell, Fannie E. Pennybacker, A. P. Mitchell, and Samuel Mitchell, the heirs of E. T. Mitchell, deceased, all citizens and residents of the State of West Virginia, except Samuel Mitchell, who is a citizen and resident of the State of Idaho; George Noble, Ann Burns, Calla Smith, Victoria Morse, Alexander Smith, Jobe Smith, Maggie Smith, Lucinda Norris, and —— Smith, whose first name is unknown, the heirs of J. M. Noble, deceased, citizens and residents of the State of Ohio; the unknown heirs of B. Johnson, deceased; J. E. Irwin, a citizen and resident of the State of Tennessee; Vesta Laidley, a citizen and resident of the State of California; Lou Ann Jobe, William R. Jobe, Thomas Jobe, Mary A. Jobe, Carlos Jobe, Hattie Jobe, an infant of the age of sixteen years, the heirs of Samuel F. Jobe, deceased, all citizens and residents of the State of West Virginia; J. L. M. Curry, a citizen and resident of the State of Virginia; Sarah E. Erwin, a citizen and resident of the State of Tennessee, and the Chesapeake and Ohio Railway Company, a corporation organized and existing under and by virtue of the laws of the State of West Virginia, and a citizen of the State of West Virginia, if they be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at rules to be held in the clerk's office of said court, at Parkersburg, on the first Monday in March next, to answer a certain amended bill in chancery, now filed and exhibited in said court against them by Collis P. Huntington, as special receiver of the Central Land Company of West Virginia, a citizen of and resident in the State of New York. Hereof you are not to fail

under the penalty of the law thence ensuing; and have then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice [SEAL.] of the United States, this 27th day of January, A. D. 1894, and in the 118th year of the Independence of the United States of America.

Attest: L. B. DELLICKER, *Clerk.*

Memorandum.

The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of March, 1894, otherwise the said bill may be taken *pro confesso.*

L. B. DELLICKER, *Clerk.*

Copy.
Attest: —— ——, *Clerk.*

(Endorsed.)

176 Received at Parkersburg February 21, 1894.

Served within subpœna by delivering an office copy thereof to each of the following-named persons, at the places and upon the dates respectively set forth as follows, viz:

Name of person served.	Place of service.	Date.
John B. Laidley	Huntington, W. Va.	Feb'y 10, 1894
C. W. Campbell	Huntington, W. Va.	Feb'y 6, 1894
William Dusty	Huntington, W. Va.	Feb'y 9, 1894
F. L. Doolittle	Huntington, W. Va.	Feb'y 7, 1894
R. A. Goodwin	Huntington, W. Va.	Feb'y 7, 1894
E. S. Doolittle	Huntington, W. Va.	Feb'y 7, 1894
George F. Donnella	Central City, W. Va.	Feb'y 17, 1894
James Prichard	Round Bottom, W. Va.	Feb'y 10, 1894
C. E. Gwinn	Huntington, W. Va.	Feb'y 7, 1894
O. E. Gwinn	Huntington, W. Va.	Feb'y 7, 1894
W. W. Gwinn	Huntington, W. Va.	Feb'y 7, 1894
W. R. Gunn	Mercer's Bottom, W. Va.	Feb'y 13, 1894
Rufus Switzer	Huntington, W. Va.	Feb'y 10, 1894
Lillie Hanly	Huntington, W. Va.	Feb'y 10, 1894
Garland Buffington	Huntington, W. Va.	Feb'y 6, 1894
W. H. H. Holswade	Huntington, W. Va.	Feb'y 6, 1894
L. D. Isbell	Huntington, W. Va.	Feb'y 8, 1894
J. S. Marcum	Huntington, W. Va.	Feb'y 7, 1894
A. L. Williams	Huntington, W. Va.	Feb'y 10, 1894
S. R. Hall	Huntington, W. Va.	Feb'y 9, 1894
Oscar Jones	Huntington, W. Va.	Feb'y 7, 1894
Miriam Laidley	Huntington, W. Va.	Feb'y 10, 1894
James K. Oney	Huntington, W. Va.	Feb'y 6, 1894
Charles Rose	Huntington, W. Va.	Feb'y 12, 1894
J. D. Terrell	Charleston, W. Va.	Feb'y 12, 1894

	J. T. Wilson	Huntington, W. Va.	Feb'y 7, 1894
177	N. Smith	Huntington, W. Va.	Feb'y 9, 1894
	Martha A. Wellman	Huntington, W. Va.	Feb'y 10, 1894
	Thomas H. Harvey	Huntington, W. Va.	Feb'y 9, 1894
	Ro. T. Harvey	Huntington, W. Va.	Feb'y 8, 1894
	Susan A. Remmele	Huntington, W. Va.	Feb'y 9, 1894
	C. F. Remmele	Huntington, W. Va.	Feb'y 9, 1894
	William Remmele	Huntington, W. Va.	Feb'y 9, 1894
	Michael O'Brien	Huntington, W. Va.	Feb'y 9, 1894
	John O'Brien	Huntington, W. Va.	Feb'y 9, 1894
	James Jasper	Huntington, W. Va.	Feb'y 9, 1894
	Margaret Sands	Huntington, W. Va.	Feb'y 9, 1894
	Katherine A. Kneff	Huntington, W. Va.	Feb'y 9, 1894
	H. C. Greenwell	Huntington, W. Va.	Feb'y 9, 1894
	E. M. Mitchell	Huntington, W. Va.	Feb'y 6, 1894
	Fannie E. Pennypacker	Huntington, W. Va.	Feb'y 6, 1894
	A. P. Mitchell	Huntington, W. Va.	Feb'y 6, 1894
	Lou Ann Jobe	Huntington, W. Va.	Feb'y 9, 1894
	William R. Jobe	Huntington, W. Va.	Feb'y 9, 1894
	Thomas Jobe	Huntington, W. Va.	Feb'y 9, 1894
	Mary A. Jobe	Huntington, W. Va.	Feb'y 9, 1894
	Carlos Jobe	Huntington, W. Va.	Feb'y 9, 1894
	Hattie Jobe	Huntington, W. Va.	Feb'y 9, 1894

Served on the Ches-peake and Ohio Railway Company February 9, 1894, by delivering an office copy of subpœna to C. C. Thackston, agent of said company, in his office, at Huntington, W. Va.

Served on W. E. Chilton, James F. Brown, and W. S. Laidley, by delivering an office copy of subpœna to each of them, at Charleston, W. Va., on February 17, 1894. Service accepted for Mary E. Chilton by W. E. Chilton, her attorney-in-fact, Feb'y 19, 1894. Service of process accepted by S. H. G. Pennybacker, at Charlottesville, Va., Feb'y 10, 1894.

178 Not served as to George H. Kyle, C W. Dillon, B. L. Miles, Thomas Miles, Lizzie Montgomery, M. M. Morrison, Gordon O'Beirne, Shelby J. Love, I. Myer, R. K. Price, J. L. M. Curry, George W. Knapp, Lucinda Norris, —— Smith, heirs of B. Johnson, deceased; J. E. Irwin, Vesta Laidley, and Sarah E. Irwin.

S. S. VINSON,
U. S. Marshal,
By E. L. NASH, *Deputy.*

Marshal's Fees.

Serving 54 summons, at $2.00	$108.00
Traveling 193 miles, at .06	11.58
Total	$119.58

Demurrer.

(Filed March 8, 1894.)

In the United States Circuit Court for the District of West Virginia.

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia, Plaintiff,
against
JOHN B. LAIDLEY ET ALS., Defendants.
} In Chancery

The joint and several demurrer of the defendants to the amended bill.

The defendants named in the amended bill of C. P. Huntington, special receiver for the Central Land Company of West Virginia, for grounds of demurrer to said amended bill jointly and severally adopt as and for their joint and several demurrer to said amended bill the demurrer of John B. Laidley, filed to the bill of complaint of the Central Land Company of West Virginia in said court, which bill is filed as Exhibit (K) with said amended bill, said ex-
179 hibit thereby being made a part of said amended bill; which demurrer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of West Virginia.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA, a Corporation, Plaintiff,
vs.
JOHN B. LAIDLEY, Defendant.
} In Equity.

The demurrer of John B. Laidley to the bill of complaint of the Central Land Company of West Virginia, a corporation, filed in the circuit court of the United States for the district of West Virginia.

The defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true in manner and form as the plaintiff hath alleged, demurs to said bill, and for cause of demurrer says:

First. It appears by plaintiff's allegations that on the 12th day of September, 1890, the defendant recovered a judgment in a certain action of ejectment in a State court, to wit, in the circuit court of Cabell county and State of West Virginia, against the plaintiff for an estate in fee-simple in the tract of two hundred and forty (240) acres of land, of which the plaintiff is in possession, situate in said county and fully described in the bill and exhibits; and it appears from the allegations of the bill that the defendant is about to sue out of the clerk's office of the said State court a writ of possession for the purpose of carrying into effect the judgment aforesaid; and yet, contrary to the statute in such case made and pro-

vided, to wit, the act prohibiting a Federal court from enjoining any suit or proceeding pending in any State court, the plaintiff prays that the defendant may be perpetually enjoined by the process of this honorable court from carrying into effect the judgment of the said State court and from suing out his writ of possession on said judgment, and from interfering with the plaintiff's possession of said land.

180 Second. And for further cause of demurrer to the said bill defendant says that the plaintiff's allegations show no equity to enjoin a judgment at law; on the contrary, the allegations and exhibits filed with the bill show that the petition for a writ of error was the plain legal remedy for the injury complained of.

The plaintiff exhibits with his bill a copy of the record of the judgment in ejectment which it asks this court to enjoin, from which it appears that at the final trial of this action of ejectment the plaintiff moved the court to give to the jury a written instruction to the effect following, viz:

"That the deed from John M. and S. H. G. Pennybacker to C. P. Huntington, bearing date February 25th, 1870, under which the plaintiff claims, was a valid conveyance of the estate of said S. H. G. Pennybacker, and that the decision of the supreme court of appeals of the State of West Virginia, rendered on the 26th day of November, 1887, in said action of ejectment on writ of error and declaring said deed void as to said S. H. G. Pennybacker, was itself null and void on the grounds that it impairs the obligation of contracts."

And it appears from the said exhibits that the State court refused said instructions and rendered judgment against complainant on the verdict of the jury, and that the plaintiff obtained a suspension of said judgment for sixty days, with intent to petition the supreme court of appeals of West Virginia for a writ of error, the plain legal remedy and the one first actually resorted to by the plaintiff, The Central Land Company of West Virginia, to review the judgment complained of in the bill.

Third. And for further cause of demurrer the defendant says that the plaintiff's allegations impeach the decision of the supreme court of the State of West Virginia rendered on the 26th day of November, 1887, on writ of error, in the progress of the action of ejectment described in the bill, which decision declares void the deed of John M. and S. H. G. Pennybacker to C. P. Huntington,

181 dated the 25th day of February, 1870, and under which the plaintiff claims, so far as it purports to convey the estate of S. H. G. Pennybacker in the land in controversy, on the grounds that said decision impairs the obligation of contracts and divests the vested rights of the plaintiff acquired under said deed, in this, as the plaintiff avers, that, as the law of the State of West Virginia stood at the date of said deed, the same was a valid contract, according to State of West Virginia, State constitution, State statute, and State judicial construction of the same, and that the subsequent decision aforesaid is a violation of said constitution and statute and repugnant to the prior judicial interpretation thereof,

and consequently is a sort of judicial legislation invading the plaintiff's rights acquired under the deed aforesaid and is therefore in violation of the Constitution of the United States.

Yet, defendant says that on comparing said decision with said State constitution, statute, and prior dicisions, the same appears not inconsistent but a just and natural construction and in harmony with the former decisions, and could by no possibility operate to divest vested rights or impair the obligation of contracts.

Fourth. And for further cause of demurrer defendants says that it appears from the record of the judgment in ejectment exhibited with the bill that on the 5th day of September, 1889, in the county of Summers, State of West Virginia, in the progress of said action and before judgment, and when said action was called for trial in the circuit court of the county of Summers (to which court it had been removed for trial, but afterwards was remanded to Cabell county) the plaintiff and defendant made and entered of record in said action a solemn agreement to the effect following—that is to say, after reciting that there was then pending in the supreme court of appeals of the State of West Virginia a certain suit in chancery, an appeal from the decree of the said circuit court of Summers county, in which the complainant, The Central Land Company of West Virginia, was plaintiff and appellant, and the defendant J. B. Laidley was defendant and appellee in suit, the prayer of the complainant's bill was for a cancellation of the deed dated
182 January 26, 1882, from S. H. G. Pennybacker to the defendant J. B. Laidley, conveying to him the land in controversy, and also for a perpetual injunction to the said action of ejectment.

And, as appears by the record of said suit then produced in court, it was agreed in open court between the plaintiff and this defendant and entered of record, at the special instance of the plaintiff, that the said action of ejectment should be stayed until the decision of said appeal, upon condition that said action of ejectment should abide the event of said chancery suit—that is to say, if the decision of the supreme court of appeals in said suit should be in favor of this defendant, then judgment in said action of ejectment should be immediately rendered in favor of this defendant, without further defense or delay.

And it appears from the record of said action of ejectment exhibited with plaintiff's bill that on the 11th day of February, 1889, the said supreme court of appeals of the State of West Virginia decided said chancery suit in favor of this defendant and denied the prayer of the plaintiff's bill for a rescis-ion of the deed aforesaid and for a perpetual injunction to said action of ejectment and dismissed the bill.

And afterward a judgment was rendered in said action of ejectment, to wit, on the 12th day of September, 1890, in favor of this defendant, as the plaintiff hath alleged.

The defendant now says that the decision last aforesaid and the agreement of record aforesaid and the judgment in ejectment aforesaid was a final arbitrament and determination of said action of ejectment, with right to execute the same by writ of possession

thereon, and the same operates as an estoppel against the plaintiff to allege any matters inconsistent with said records and the said agreement, and from again controverting identically the same matter so adjudicated.

And so he says the plaintiff's own exhibits estop it from appealing to this court for an injunction to the writ of possession
183 on judgment upon the allegations of the bill and the said exhibits.

Fifth. And the defendant, for further cause of demurrer, says that the exhibits filed with the bill show that the charge of fraud in the procurement of the deed from S. H. G. Pennybacker to this defendant for the land in controversy, dated January 26th, 1882, has been fully adjudicated by a decree of the supreme court of appeals of the State of West Virginia, rendered on the 11th day of February, 1889, in favor of defendant, in a suit between the plaintiff and this defendant.

And so he says that the plaintiff is now estopped to allege any matter inconsistent with said record and from again controverting the matter so adjudicated.

Sixth. And for further cause of demurrer the defendant says the allegations of the bill show no equity for a cancellation of the deed from S. H. G. Pennybacker to this defendant for the land in controversy, dated January 26th, 1882.

Seventh. And the plaintiff's allegations show no ground for an injunction to the writ of possession in the bill mentioned.

Eighth. The bill does not show jurisdiction. The parties, both, are residents of the State of West Virginia and there is no Federal question presented.

Ninth. If the bill presents a Federal question the Exhibit "F," filed with the bill, shows that such question has been adjudicated by a court of competent and concurrent jurisdiction; and having relied on such defense in the State court, the plaintiff is bound by its choice of tribunals and remedies.

Therefore the defendant prays the judgment of this court whether he shall make any other or further answer to the plaintiff's bill, and that he be hence dismissed with his costs, etc.

(Signed) JOHN B. LAIDLEY, *Defendant.*

JAMES F. BROWN,
CAMPBELL & HOLT,
W. E. CHILTON, *Attorneys.*

184 UNITED STATES OF AMERICA, }
District of West Virginia. }

This day personally appeared before me, the undersigned, commissioner of the United States for the district of West Virginia, John B. Laidley, and made oath that the foregoing demurrer is not interposed for delay in the suit in which it is filed, and that the same *are* true in point of fact.

Given under my hand this 22nd day of January, 1891.

G. F. RATLIFF,
U. S. Com'r, Dist. W. Va.

I, John H. Holt, of council, practicing in the United States circuit court for the district of West Virginia, do certify that in my opinion the foregoing demurrer of John B. Laidley is well founded in point of law.

(Signed) JOHN H. HOLT.

And for further grounds of demurrer the defendants say that it appears from said Exhibit (K) that the prayer of the said amended bill in effect asks an injunction to stay a judgment at law of a State court upon the grounds that such judgment in effect impairs the obligation of the contract or title of C. P. Huntington set up in said amended bill, and is therefore in violation of sec. 10, art. 1, of the Constitution of the United States; but defendants say, jointly and severally, that said clause of the United States Constitution prohibits State legislation from impairing the obligation of contracts, but does not apply to or affect the decision of State courts.

Therefore the defendants pray the judgment of this court whether they shall make any other or further answer to the plaintiff's amended bill, and that they be hence dismissed with their costs, etc.

JOHN B. LAIDLEY,
W. S. LAIDLEY, *Trustee,*
VESTA LAIDLEY,
ALBERTA LAIDLEY,
185 M. P. LAIDLEY,
T. J. BRYAN,
C. W. CAMPBELL,
F. L. DOOLITTLE,

and all the other defendants named in said amended bill, by attorney.

JOHN B. LAIDLEY,
Attorney for Defendants.

UNITED STATES OF AMERICA, *District of West Virginia,* } *ss:*

This day personally appeared before me, the undersigned, commissioner of the United States for the district of West Virginia, John B. Laidley, one of the defendants in the above demurrer, and made oath that the same is not interposed for delay in the said suit of C. P. Huntington, special receiver, etc., against J. B. Laidley *et als.*, in which it is filed.

Given under my hand this 7th day of March, 1894.

T. J. BRYAN,
U. S. Com'r, Dist of W. Va.

I, C. W. Campbell, of counsel for defendants in the foregoing demurrer and an attorney practicing in the United States circuit court for the district of West Virginia, do certify that in my opinion the foregoing demurrer of John B. Laidley and others is well founded in point of law.

C. W. CAMPBELL.

And at another day, to wit, on the 20th day of June, 1895, the following order was made and entered of record, to wit:

COLLIS P. HUNTINGTON, Receiver of the Central Land Co. of West Va., Plaintiff,
vs.
JOHN B. LAIDLEY and Others. } In Equity.

This day came the defendants Mary E. Chilton and William E. Chilton and, by leave of the court first had and obtained, filed thier joint and separate demurrer to the bill of complaint herein; which demurrer is set down for argument.

186

Demurrer of M. E. & W. E. Chilton.

(Filed June 20, 1895.)

In the Circuit Court of the United States for the District of West Virginia.

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia, Plaintiff,
vs.
JOHN B. LAIDLEY and Others, Defendants. } In Equity.

The joint and several demurrers of Mary E. Chilton and William E. Chilton to the bill and amended bill.

And now comes the defendants Mary E. Chilton and William E. Chilton, and jointly and separately, by protestation, not confessing or acknowledging all or any of the matters and things in said bill and amended bill contained to be true in manner and form as the plaintiff hath alleged, demur to said bill and amended bill, and for cause of demurrer say:

The defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true in manner and form as the plaintiff hath alleged, demurs to said bill, and for cause of demurrer says:

First. It appears by plaintiff's allegations that on the 12th day of September, 1890, the defendant recovered a judgment in a certain action of ejectment in a State court, to wit, in the circuit court of Cabell county, State of West Virginia, against the plaintiff for an estate in fee-simple in the tract of two hundred and forty (240) acres of land, of which the plaintiff is in possession, situate in said county and fully described in the bill and exhibits; and it appears from the allegations of the bill that the defendant is about to sue out of the clerk's office of the said State court a writ of possession for the purpose of carrying into effect the judgment aforesaid; and yet, contrary to the statute in such case made and provided, to wit, the act prohibiting a Federal court from enjoining any suit or proceeding pending in any State court, the plaintiff prays that this defendant may be perpetually enjoined by

187

the process of this honorable court from carrying into effect the judgment of the said State court, and from sueing out his writ of possession on said judgment and from interfering with the plaintiff's possession of said land.

Second. And for further cause of demurrer to the said bill defendants say that the plaintiff's allegations show no equity to enjoin a judgment at law. On the contrary, the allegations and exhibits filed with the biil show that the petition for a writ of error was the plain legal remedy for the injury complained of.

The plaintiff exhibits with this bill a copy of the record of the judgment in ejectment, which it asks this court to enjoin, from which it appears that at the final trial of this action of ejectment the plaintiff moved the court to give to the jury a written instruction to the effect following, viz:

"That the deed from John M. and S. H. G. Pennybacker to C. P. Huntington, bearing date February 25th, 1870, under which the plaintiff claims, was a valid conveyance of the estate of said S. H. G. Pennybacker, and that the decision of the supreme court of appeals of the State of West Virginia rendered on the 26th day of November, 1887, in said action of ejectment on writ of error, and declaring said deed void as to said S. H. G. Pennybacker, was itself null and void on the grounds that it impairs the obligation of contracts."

And it appears from the said exhibits that the State court refused said instructions and rendered judgment against complainant on the verdict of the jury, and that the plaintiff obtained a suspension of said judgment for sixty days with intent to petition the supreme court of appeals of West Virginia for a writ of error, the plain legal remedy and the one first actually resorted to by the plaintiff,

188 The Central Land Company of West Virginia, to review the judgment complained of in the bill.

Third. And for further cause of demurrer the defendants say that the plaintiff's allegations impeach the decision of the supreme court of the State of West Virginia, rendered on the 26th day of November, 1887, on writ of error, in the progress of the action of ejectment described in the bill, which decision declares void the deed of John M. and S. H. G. Pennybacker to C. P. Huntington, dated the 25th day of February, 1870, and under which the plaintiff claims, so far as it purports to convey the estate of S. H. G. Pennybacker in the land in controversy, on the grounds that said decision impairs the obligation of contracts and divests the vested rights of the plaintiff acquired under said deed, in this, as the plaintiff avers, that as the law of the State of West Virginia stood at the date of said deed the same was a valid contract according to the State of West Virginia, State constitution, State statute, and State judicial construction of the same, and that the subsequent decision aforesaid is a violation of said constitution and statute and repugnant to the prior judicial interpretation thereof, and consequently is a sort of judicial legislation, invading the plaintiff's rights acquired under the deed aforesaid, and is therefore in violation of the Constitution of the United States.

Yet defendant says that on comparing said decision with said

State constitution, statute, and prior decisions the same appears not inconsistent, but a just and natural construction and in harmony with the former decisions and could, by no possibility, operate to divest vested rights or impair the obligation of contracts.

Fourth. And for further cause of demurrer defendants say that it appears from the record of the judgment in ejectment exhibited with the bill that on the 5th day of September, 1889, in the county of Summers, State of West Virginia, in the progress of said action and before judgment, and when said action was called for trial in the circuit court of the county of Summers (to which court it had been removed for trial, but afterwards was remanded to Cabell county), the plaintiff and defendant made and entered of record in said action
189 a solemn agreement to the effect following—that is to say, after reciting that there was then pending in the supreme court of appeals of the State of West Virginia a certain suit in chancery on appeal from the decree of the said circuit court of Summers county, in which the complainant, The Central Land Company of West Virginia, was plaintiff and appellant, and the defendant J. B. Laidley was defendant and appellee, in which suit the prayer of the complainant's bill was for a cancellation of the deed dated January 26th, 1882, from S. H. G. Pennybacker to the defendant J. B. Laidley, conveying to him the land in controversy, and also for a perpetual injunction to the said action of ejectment.

And, as appears by the records of said suit then produced in court, it was agreed in open court between the plaintiff and this defendant, and entered of record at the special instance of the Central Land Company of West Virginia, whose receiver is the plaintiff, that the said action of ejectment should be stayed until the decision of said appeal, upon condition that said action of ejectment should abide the event of said chancery suit—that is to say, if the decision of the supreme court of appeals in said suit should be in favor of this defendant, then judgment in said action of ejectment should be immediately rendered in favor of this defendant without further defense or delay.

And it appears from the record of said action of ejectment exhibited with plaintiff's bill that on the 11th day of February, 1889, the said supreme court of appeals of the State of West Virginia decided said chancery suit in favor of this defendant, and denied the prayer of the plaintiff's bill for a re-cis-ion of the deed aforesaid and for a perpetual injunction to said action of ejectment, and dismissed the bill.

And afterward a judgment was rendered in said action of ejectment, to wit, on the 12th day of September, 1890, in favor of this defendant, as the plaintiff hath alleged.

The defendants now say that the decision last aforesaid, and the agreement of record aforesaid, and the judgment in ejectment aforesaid was a final arbitrament and determination of said action of ejectment, with right to execute the same by writ of posses-
190 sion thereon, and the same operates as an estoppel against the plaintiff to allege any matters inconsistent with said

records and the said agreement and from again controverting identically the same matter so adjudicated.

And further it is shown by the bill that all the matters and things alleged therein as grounds of equitable relief were or could have been set forth and alleged in said suit in equity so decided in said State court, and the said Central Land Company, which plaintiff now represents, did or should have fully litigated all of said matters in said suit in equity in said State court.

And so he says the plaintiff's own exhibits estop him from appealing to this court for an injunction to the writ of possession on said judgment upon the allegations of the bill and the said exhibits.

Fifth. And the defendants for further cause of demurrer say that the exhibits filed with the bill show that the charge of fraud in the procurement of the deed from S. H. G. Pennybacker to this defendant for the land in controversy, dated January 26th, 1882, has been fully adjudicated by a decree of the supreme court of appeals of the State of West Virginia rendered on the 11th day of February, 1889, in favor of defendant Laidley in a suit between the Central Land Co. of West Virginia, whose receiver is the plaintiff, and the defendant Laidley, under whom these defendants claim.

And so they say that the plaintiff is now estopped to allege any matter inconsistent with said record and from again controverting the matter so adjudicated.

And further it is shown by said bill that the Central Land Company of West Virginia at the time the plaintiff was appointed receiver thereof had no title to the land involved in this suit, and therefore plaintiff has no title thereto, and neither has now, nor did either have at the time of the institution of this suit, any interest in the subject-matter of this suit, and cannot be heard in any court to litigate the title or right of these defendants thereto.

Sixth. And for further cause of demurrer the defendants say the allegations of the bill show no equity for a cancellation of
191 the deed from S. H. G. Pennybacker to this defendant for the land in controversy, dated January 26th, 1882.

Seventh. And the plaintiff's allegations show no ground for an injunction to the writ of possession in the bill mentioned.

Eighth. The bill does not show jurisdiction, the said plaintiff being receiver of the Central Land Company of West Virginia, a corporation created and organized under the laws of West Virginia and a citizen of West Virginia, and its citizenship and not that of the receiver controls the jurisdiction, and some of the defendants, including these defendants, are also citizens of West Virginia, and there is no Federal question presented.

Ninth. If the bill presents a Federal question, the exhibits filed with the bill show that such question has been adjudicated by a court of competent and concurrent jurisdiction, and having relied on such defense in the State court, and said Central Land Co. having appealed to the State courts, the plaintiff is bound by its choice of tribunals and remedies.

And for further grounds of demurrer the defendants say that it

appears that the prayer of the said bill and amended bill in effect asks an injunction to stay a judgment at law of a State court upon the grounds that such judgment in effect impairs the obligation of the contract or title of C. P. Huntington, set up in said amended bill, and is therefore in violation of sec. 10, art. 1, of the Constitution of the United States; but defendants say, jointly and severally, that said clause of the United States Constitution prohibits State legislation from impairing the obligation of contracts, but does not apply to or affect the decision- of State courts, but under the law the obligation of no contract has been impaired.

The plaintiff stands in relation to this property just as the Central Land Company of West Virginia does, and it appears from said original and amended bill that the said Central Land Company of West Virginia have fully litigated with the defendant John B. Laidley, both at law and in equity, every matter and thing
192 which properly could or should be litigated, including all the material matters alleged in said original and amended bill, and that all the material allegations constituting the alleged equitable grounds of relief relied upon by the plaintiff in said original and amended bill were set up, alleged, and relied upon in a suit in equity heretofore instituted in the State court of West Virginia by said The Central Land Company of West Virginia against said John B. Laidley, and that said State court decided by its judgment all said matters and things against said The Central Land Company of West Virginia, which said State court then and there had jurisdiction of the persons and the subject-matter of said suit, and the said judgment of said State court is still binding and has never been reversed and is conclusive against the right of the plaintiff to bring and maintain this suit, and these defendants are purchasers, indirectly or directly, from said Laidley, as appears from said bill and amended bill, and are not shown by said bill and amended bill to have had notice of any of the matters therein alleged as grounds of equity against the said Laidley, and by said bill are shown to be innocent purchasers, not knowing any of said matters alleged to have happened prior to the dates of their deeds to them of said land.

Therefore the defendants pray the judgment of this court whether they shall make any other or further answer to the plaintiff's amended bill, and that they be hence dismissed with their costs, etc.

MARY E. CHILTON.
WILLIAM E. CHILTON.

J. E. CHILTON,
Solicitor & of Counsel.

UNITED STATES OF AMERICA,
State of West Virginia, County of Kanawha, } ss:

This day personally appeared before me, the undersigned, notary public in and for said county and State, Mary E. Chilton and William E. Chilton, and, each being duly sworn, made oath that the

foregoing demurrer is not interposed for delay in the suit in
193 which it is filed, and that the same is true in point of fact.

WILLIAM E. CHILTON.
MARY E. CHILTON.

Taken, subscribed, and sworn to before me this 12th day of June, 1895, as witness my hand and official seal.

A. M. HAMILTON,
[NOTARIAL SEAL.] *Notary Public in and for Kanawha County, West Virginia.*

I, J. E. Chilton, an attorney practicing in the circuit court of the United States for the district of West Virginia and counsel in the above cause, do certify that in my opinion the foregoing demurrer of Mary E. Chilton and William E. Chilton is well founded in point of law.

Given under my hand this 12th day of June, 1895.

J. E. CHILTON.

And at another day, to wit, on the 3rd day of July, 1895, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia,
vs.
JOHN B. LAIDLEY ET AL. } In Equity.

This day came John B. Laidley, Vesta Laidley, Alberta Laidley, W. S. Laidley, Thomas J. Bryan, James F. Brown, Mary E. Chilton, William E. Chilton, C. W. Campbell, F. L. Doolittle, R. A. Goodwin, Edward S. Dolittle, George F. Donella, Rufus Switzer, L. D. Isbell, Miriam Laidley, George E. McDonald, James K. Oney, John T. Wilson, Thomas H. Harvey, R. T. Harvey, J. E. Irwin, and Sarah E. Irwin, and, by their counsel, tendered and filed their joint and several demurrer to the bill and amended bill of the plaintiff filed herein against them and others, and the plaintiff joined in said demurrer, and the same is set down for hearing.

194 *Demurrer.*

(Filed July 3rd, 1895.)

In the Circuit Court of the United States for the District of West Virginia.

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia, Plaintiff,
vs.
JOHN B. LAIDLEY and Others, Defendants.
} In Equity.

The joint and several demurrers of John B. Laidley, Vesta Laidley, Alberta Laidley, W. S. Laidley, Thomas J. Bryan, James F. Brown, Mary E. Chilton, William E. Chilton, C. W. Campbell, F. L. Doolittle, R. A. Goodwin, Edward S. Doolittle, George F. Donnella, Rufus Switzer, L. D. Isbell, Miriam Laidley, George E. McDonald, James K. Oney, John T. Wilson, Thomas H. Harvey, R. T. Harvey, J. E. Irwin, and Sarah E. Irwin to the bill and amended bill of the plaintiff herein.

And now come the defendant- aforesaid and jointly and separately by protestation, not confessing or acknowledging all or any of the matters and things in said bill and amended bill contained to be true in manner and form as the plaintiff hath alleged, demur to said bill and amended bill and for cause of demurrer say:

The defendant- by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true in manner and form as the plaintiff hath alleged, demurs to said bill and for cause of demurrer say:

First. It appears by plaintiff's allegations that on the 12th day of September, 1890, the defendant- recovered a judgment in a certain action of ejectment in a State court, to wit, in the circuit court of Cabell county, State of West Virginia, against the plaintiff for an estate in fee-simple in a tract of two hundred and forty (240) acres of land, of which the plaintiff is in possession, situate in said county and fully described in the bill and exhibits; and it appears from the allegations of the bill that the defendant- *is* about to sue out of the clerk's office of the said State court a writ of possession
195 for the purpose of carrying into effect the judgment aforesaid, and yet, contrary to the statute in such case made and provided, to wit, the act prohibiting the Federal court from enjoining any suit or proceeding pending in any State court, the plaintiff prays that *this* defendant- may be perpetually enjoined by the process of this honorable court from carrying into effect the judgment of the said State court and from suing out *his* writ of possession on said judgment and from interfering with plaintiff's possession of said land.

Second. And for further cause of demurrer to the said bill defendants say that the plaintiff's allegations show no equity to enjoin

a judgment at law; on the contrary, the allegations and exhibits filed with the bill show that the petition for a writ of error was the plain legal remedy for the injury complained of.

The plaintiff exhibits with *his* bill a copy of the record of the judgment in ejectment, which it asks this court to enjoin; from which it appears that at the final trial of this action of ejectment the plaintiff moved the court to give to the jury a written instruction to the effect following, viz:

"That the deed from John M. and S. H. G. Pennybacker to C. P. Huntington, bearing date February 25th, 1870, under which the plaintiff claims, was a valid conveyance of the estate of said S. G. G. Pennybacker, and that the decision of the supreme court of appeals of the State of West Virginia, rendered on the 25th day of November, 1887, in said action of ejectment on writ of error and declaring said deed void as to said S. H. G. Pennybacker, was itself null and void, on the ground that it impairs the obligation of contracts."

And it appears from the said exhibits that the State court refused said instructions and rendered judgment against the complainant on the verdict of the jury, and that the plaintiff obtained a suspension of said judgment for sixty days, with intent to petition the supreme court of appeals of West Virginia for a writ of error, the plain legal remedy and the one first actually resorted to by the plaintiff, The Central Land Company of West Virginia, to review the judgment complained of in the bill.

196 Third. And for further cause of demurrer the defendants say that the plaintiff's allegations impeach the decision of the supreme court of the State of West Virginia, rendered on the 26th day of November, 1887, on writ of error, in the progress of the action of ejectment described in the bill; which decision declares void the deed of John M. and S. H. G Pennybacker to C. P. Huntington, dated the 25th day of February, 1870, and under which the plaintiff claims, so far as it purports to convey the estate of S. H. G. Pennybacker in the land in controversy, on the grounds that the said decision impairs the obligation of contracts and divests the vested rights of the plaintiff acquired under said deed, in this, as the plaintiff avers, that as the law of the State of West Virginia stood at the date of said deed, the same was a valid contract according to the State of West Virginia State constitution, State statute, and State judicial construction of the same, and that the subsequent decision aforesaid is a violation of said constitution and statute and repugnant to the prior judicial interpretation thereof, and consequently is a sort of judicial legislation invading the plaintiff's rights acquired under the deed aforesaid, and is therefore in violation of the Constitution of the United States. Yet defendants say that on comparing said decisions with said State Constitution, statute, and prior decisions the same appears not inconsistent, but a just and natural construction, and in harmony with the former decisions, and could by no possibility operate to divest vested rights or impair the obligation of contracts.

Fourth. And for further cause of demurrer defendants say that it appears from the record of judgment in ejectment exhibited with

the bill that on the 5th day of September, 1889, in the county of Summers, State of West Virginia, in the progress of said action, and before judgment, and when said action was called for trial in the circuit court of the county of Summers (to which court it had been removed for trial, but afterwards was remanded to Cabell county), the plaintiff and defendant made and entered of record in said action a solemn agreement to the effect following—that is to say,
197 after reciting that there was then pending in the supreme court of appeals of the State of West Virginia a certain suit in chancery on appeal from the decree of the said circuit court of Summers county, in which the complainant, The Central Land Company of West Virginia, was plaintiff and appellant and the defendant, J. B. Laidley, was defendant and appellee, in which suit the prayer of the complainant's bill was for a cancellation of the deed dated January 26th, 1882, from S. H. G. Pennybacker to the defendant J. B. Laidley, conveying to him the land in controversy, and also for a perpetual injunction to the said action of ejectment; and, as appears by the records of said suit, then produced in court, it was agreed in open court between the plaintiff and this defendant, and entered of record at the special instance of the Central Land Company of West Virginia, whose receiver is the plaintiff, that the said action of ejectment should be stayed until the decision of said appeal, upon condition that said action of ejectment should abide the event of said chancery suit—that is to say, if the decision of the supreme court of appeals in said suit should be in favor of this defendant, then judgment in said action of ejectment should be immediately rendered in favor of this defendant without further defense or delay.

And it appears from the record of said action of ejectment exhibited with plaintiff's bill that on the 11th day of February, 1889, the said supreme court of appeals of the State of West Virginia decided said chancery suit in favor of this defendant, and denied the prayer of the plaintiff's bill for a re-cis-ion of the deed aforesaid and for a perpetual injunction to said action of ejectment, and dismissed the bill, and afterward a judgment was rendered in said action of ejectment, to wit, on the 12th day of September, 1890, in favor of this defendant, as the plaintiff hath alleged.

The defendants now say that the decision last aforesaid and the agreement of record aforesaid and the judgment in ejectment aforesaid was a final arbitrament and determination of said action of ejectment, with right to execute the same by writ of possession thereon, and the same operates as an estoppel against the plaintiff to allege any matters inconsistent with said records and
198 the said agreement and from again controverting identically the same matter so adjudicated.

And further it is shown by the bill that all the matters and things alleged therein as grounds of equitable relief were or could have been set forth and alleged in said suit in equity so decided in said State court, and the said Central Land Company, which plaintiff now represents, did or should have fully litigated all of said matters in said suit in equity in said State court.

And so he says the plaintiff's own exhibits estops him from appealing to this court for an injunction to the writ of possession on said judgment upon the allegations of the bill and the said exhibits.

Fifth. And the defendants for further cause of demurrer say that the exhibits filed with the bill show that the charge of fraud in the procurement of the deed from S. H. G. Pennybacker to this defendant for the land in controversy, dated January 26th, 1882, has been fully adjudicated by a decree of the supreme court of appeals of the State of West Virginia, rendered on the 11th day of February, 1889, in favor of defendant Laidley in a suit between the Central Land Company of West Virginia, whose receiver is plaintiff, and the defendant Laidley, under whom these defendants claim; and so they say the plaintiff is now estopped to allege any matter inconsistent with said record and from again controverting the matter so adjudicated. And further it is shown by said bill that the Central Land Company of West Virginia at the time the plaintiff was appointed receiver thereof had no title to the land involved in this suit, and therefore plaintiff has no title thereto, and neither has now nor did either have at the time of the institution of their suit any interest in the subject-matter of this suit and cannot be heard in any court to litigate the title of these defendants thereto.

Sixth. And for further cause of demurrer the defendants say the allegations of the bill show no equity for a cancellation of the deed from S. H. G. Pennybacker to this defendant for the land in controversy, dated January 26th, 1882.

199 Seventh. And the plaintiff's allegations show no ground for an injunction to the writ of possession in the bill mentioned.

Eighth. The bill does not show jurisdiction. The said plaintiff being receiver of the Central Land Company of West Virginia, a corporation created and organized under the laws of West Virginia, *and* its citizenship and not that of the receiver controls the jurisdiction, and some of the defendants, including these defendants, are also citizens of West Virginia, and there is no Federal question presented.

Ninth. If the bill presents a Federal question, the exhibits filed with the bill show that such question has been adjudicated by a court of competent and concurrent jurisdiction; and having relied on such defense in the State court, the plaintiff is bound by its choice of tribunal and remedies.

And for further grounds of demurrer the defendants say that it appears that the prayer of the said bill and amended bill in effect asks an injunction to stay a judgment at law of a State court upon the grounds that such judgment in effect impairs the obligation of the contract or title of C. P. Huntington set up in said amended bill and is therefore in violation of sec. 10, art. 1, of the Constitution of the United States; but defendants say, jointly and severally, that said clause of the United States Constitution prohibits State legislation from impairing the obligation of contracts, but does not apply to or affect the decision of State courts; but under the law

the obligation of no contract has been impaired. The plaintiff stands in relation to this property just as the Central Land Company of West Virginia does, and it appears from said original and amended bill that the said Central Land Company of West Virginia have fully litigated with the defendant John B. Laidley, both at law and in equity, every matter and thing which properly should or could be litigated, including all the material matters alleged in said original and amended bill, and that all the material allegations constituting the alleged equitable grounds of relief relied upon by the plaintiff in said original and amended bill were set up,
200 alleged, and relied upon in a suit of equity heretofore instituted in the State court of West Virginia by said Central Land Company against John B. Laidley, and that said court decided by its judgment all said matters and things against said Central Land Company of West Virginia; which said State court then and there had jurisdiction of the persons and the subject-matter of said suit, and the said judgment of the said State court is still binding, and has never been reversed, and is conclusive against the right of the plaintiff to bring and maintain this suit, and these defendants are purchasers, indirectly or directly, from said Laidley, as appears from said bill and amended bill, and are not shown by said bill and amended bill to have had notice of any of the matters therein alleged as grounds of equity against the said Laidley, and by said bill are shown to be innocent purchasers, not knowing any of said matters alleged to have happened prior to the dates of their deeds to them of said land.

Therefore the defendants pray the judgment of this court whether they shall make any other or further answer to plaintiff's amended bill, and that they be hence dismissed with their costs, &c.

JOHN B. LAIDLEY.
RUFUS SWITZER.
C. W. CAMPBELL.
THOS. H. HARVEY.
ROBT T. HARVEY.
F. L. DOOLITTLE.
L. D. ISBELL.
R. A. GOODWIN.
JOHN T. WILSON.
JAMES F. BROWN.
E. S. DOOLITTLE.
GEO. F. DONNELLA.

STATE OF WEST VIRGINIA, *Cabell County*, } *To wit:*

This day personally appeared before me, the undersigned,
201 notary public in and for the State and county aforesaid, Thomas J. Bryan, one of the defendants in the foregoing demurrer, and, being duly sworn, made oath that the said demurrer on behalf of himself and the other defendants named therein is not interposed for delay in the suit in which it is filed, and that the same is true in point of fact.

THOS. J. BRYAN.

Taken, subscribed, and sworn to before me this 2nd day of July, 1895.

GEORGE LINN,

[NOTARIAL SEAL.] *Notary Public in and for the County and State Aforesaid.*

I, John H. Holt, an attorney practicing in the circuit court of the United States for the district of West Virginia and of counsel in the above cause, do certify that in my opinion the foregoing demurrer of John B. Laidley *et al.* is well founded in point of law.

Given under my hand this 2nd day of July, 1895.

JOHN H. HOLT.

J. F. BROWN,
W. E. CHILTON,
CAMPBELL HOLT,
Of Counsel for Defendants.

Plea & Answer of John B. Laidley et al.

(Filed Feb'y 26th, 1896.)

202 In the Circuit Court of the United States for the District of West Virginia, Sitting at Parkersburg.

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia, a Corporation, Plaintiff,
vs.
JOHN B. LAIDLEY and Others, Defendants. } In Chancery.

To the honorable the judges of said court:

The joint and separate plea and answer of John B. Laidley, W. S. Laidley, trustee; Thos. J. Bryan, James F. Brown, Wm. E. Chilton, Mary E. Chilton, C. W. Campbell, F. L. Doolittle, E. S. Doolittle, R. A. Goodwin, Geo. F. Donnella, James Prichard, C. E. Gwinn, O. E. Gwinn, W. W. Gwinn, Rufus Switzer, Garland Buffington, Lilie Handley, W. R. Gunn, W. H. H. Holswade, L. D. Isbell, Oscar Jones, Miriam Laidley, Lizzie Montgomery, James K. Oney, Gordon O'Bierne, J. D. Terrell, John T. Wilson, Thos. H. Harvey, J. E. Erwin, N. Smith, and Vesta Laidley, to the amended bill of complaint filed in said court by C. P. Huntington, special receiver, against them and others.

By protestation, not confessing any of the matters and things to be true in manner and form as the plaintiff hath alleged in his said amended bill, for plea thereto the defendants say the plaintiff ought not to be heard to allege against them, as he hath done in his amended bill, that the Central Land Company of West Virginia, at the date of his appointment as special receiver for said company, to wit, on the 16th day of December, 1890, had right of possession and title to the tract of 240 acres of land mentioned in said amended bill.

Because they say that heretofore, to wit, at April rules, 1882, said John B. Laidley filed his declaration in ejectment in the clerk's office of the circuit court of Cabell county, State of West Vir-
203 ginia, against the Central Land Company of West Virginia, and thereby instituted his action of ejectment in said court against said company to recover possession of an estate in fee-simple in said tract of land. Said company afterwards filed its plea of not guilty to said declaration in said court, upon which plea issue was joined, and a trial of said action was had in said court in December, 1884, which resulted in a verdict for said company, in pursuance with instructions given to the jury by the court, and judgment was rendered by said court upon said verdict in favor of said company against said Laidley. Before the jury the said company relied in support of its title upon the four deeds exhibited with the plaintiff's said amended bill, marked "Exhibit (A)," "Exhibit (B)," "Exhibit (C)," "Exhibit (D)," respectively, and upon its possession under said deeds; and, in support of his title, said Laidley relied upon the deed exhibited with said plaintiff's amended bill, marked "Exhibit (F)," and said Laidley moved the court to instruct the jury that the deed above described as "Exhibit B" was null and void so far as it affected the estate and interest of S. H. G. Pennybacker in said land; which motion the court refused.

Upon the petition of said John B. Laidley the supreme court of appeals of West Virginia, on the 23d day of October, 1886, awarded a writ of error to the judgment aforesaid, and on the 27th day of November, 1887, upon the final hearing on said petition, said supreme court declared said deed, "Exhibit (B)," being the deed of John M. Pennybacker and S. H. G. Pennybacker to C. P. Huntington, bearing date the 25th day of February, 1870, null and void, so far as it purports to convey the estate of S. H. G. Pennybacker in said land, and reversed said judgment, set aside said verdict, and awarded a new trial of said action. Said supreme court, in
204 its opinion and judgment on said writ of error, declared that the legal effect of said deed was to vest a freehold estate in John M. Pennybacker for the lives of himself and Sarah H. G. Pennybacker, and a remainder in fee-simple in said S. H. G. Pennybacker, upon the death of her husband, J. M. Pennybacker, and that said deed did not vest a separate estate in the said S. H. G. Pennybacker. Said judgment of the said supreme court remains in full force and effect, unreversed or set aside, and is conclusive upon the matters therein decided between said John B. Laidley and the said Central Land Company and their privies and the plaintiff, C. P. Huntington, special receiver.

On the 12th day of September, 1890, upon the new trial of said action, a verdict was returned by the jury in favor of said John B. Laidley against said Central Land Company for an estate in fee-simple in said land, as described in the surveyor's report, and judgment was rendered by said circuit court of Cabell county, according to the verdict of the jury, for an estate in fee-simple in the said land, as described in the said report, which judgment remains in full force and effect, unreversed or set aside, and by the statute of

the State of West Virginia is made conclusive between the parties to said action and all persons claiming under and asserting the same title and possession involved in said action.

The defendants aver that before the jury at said trial the defendant John B Laidley and plaintiff in said action, in support of his title, relied upon the deed executed by S. H. G. Pennybacker to him, said J. B. Laidley, bearing date the 26th day of January, 1882, a copy of which is filed with plaintiff's amended bill, marked "Exhibit (F)," and the said Central Land Company of West Virginia, defendant in said action, in support of its title, relied upon three deeds, to wit, a deed purporting to be executed by S. H. G. Pennybacker and John M. Pennybacker to C. P. Huntington, bear-
205 ing date the 25th day of February, 1870; second, a deed executed by Albert Laidley and Vesta Laidley to C. P. Huntington, bearing date the 13th day of April, 1870; third, a deed executed by C. P. Huntington to said Central Land Company of West Virginia, bearing date the 16th day of October, 1871, copies of which three several deeds are filed with plaintiff's amended bill, marked "Exhibit (B)," "Exhibit (C)," and "Exhibit (D)," respectively. Both parties to said action relied upon the title of S. H. G. Pennybacker, derived by deed from Rebecca J. Everett, bearing date the 18th day of August, 1865. Said deed was in evidence before the jury, a copy of which is also exhibited with plaintiff's amended bill, marked "Exhibit (A)." The court, after the evidence was in, instructed the jury that the deed described above as "Exhibit (B)" was null and void as to S. H. G. Pennybacker and did not convey her estate in the lands in controversy to C. P. Huntington, and the jury found a verdict as aforesaid in favor of said Laidley.

The defendants say that afterwards and pending said action of ejectment the said Central Land Company of West Virginia instituted its suit in chancery against said J. B. Laidley, C. P. Huntington, and others in the circuit court of Cabell county, State of West Virginia, and, to wit, at June rules, held in the clerk's office of said court on the first Monday in June, in the year 1887, filed its bill of complaint in said suit.

That in said bill of complaint the said company alleged that R. J. Everett, being seized in fee of a tract of 240 acres of land, situate in Cabell county, on the 18th day of August, 1865, sold and conveyed the same to S. H. G. Pennybacker; that on the 25th day of February, 1870, S. H. G. Pennybacker sold and conveyed the same to C. P. Huntington for $11,000; that her husband, John M. Pennybacker, joined in said deed; that on the 16th day of
206 October, 1871, C. P. Huntington sold and conveyed the same to said company; that on the 13th day of April, 1870, Albert Laidley, the father, and his wife, the mother, of defendant John B. Laidley, conveyed all of Albert Laidley's interest in said land to C. P. Huntington; that C. P. Huntington and his grantee, the land company, held, under the said deeds to Huntington, open, actual, adverse, and exclusive possession of the land; that on the 26th day of January, 1882, after the death of Jno. M. Pennybacker, defendant John B. Laidley, with full notice of the land company's equities,

procured from S. H. G. Pennybacker a deed of conveyance to him of said tract for $500; that said Laidley, a practicing attorney, *ex mero motu*, endeavored to induce said Sarah Pennybacker to commence suit against the then owners, informing her that she had an interest in or claim to the same for a fee of one-half of the recovery; that she refused the offer and refused to bring suit, saying she and her husband had sold the land to Huntington for $11,000, had received the money, and made no claim to the land: that afterwards Laidley informed her that her interest was a dower interest, and offered her $500 for it, which she accepted, received $100 cash, and discounted Laidley's note for $400 for $225; that in July, 1872, Sarah H. G. Pennybacker filed her bill in chancery against her husband, John M. Pennybacker, and others, in which she recognized her sale to Huntington of the 240 acres now here in controversy and had the same declared, by decree therein, her sole and separate property; that on the 20th day of February, 1874, said S. H. G. Pennybacker conveyed to Warren J. Parsons the one acre reserved in her deed to Huntington, and therein recognizes her sale to Huntington; that by virtue of said several deeds and said actual possession and said decree and Laidley's notice of all said facts the company's title was valid in law and equity, and J. B. Laidley took nothing by his deed; that the same is a cloud on the com-
207 pany's title; that at the date of Laidley's deed the land was worth $30,000 by reason of improvements put by the company on the land and adjoining lands; that said deed was procured by Laidley by fraud, imposition, misrepresentation, and concealment; that the consideration was inadequate; that she was induced to believe she was conveying her dower interest only; that he concealed from her that she had a fee-simple, if any, interest; that Laidley purchased with intent of bringing suit against the true owners and to defraud them; that she and her husband were insolvent and not liable on their warranty; that having used the purchase-money, she was estopped to assert her claims; and Laidley, being a purchaser with notice, is also estopped; that by reason of the facts alleged, Laidley, if he took the legal title, *he* held it as trustee for the company, the latter having acquired the superior equity; that Laidley has pending in supreme court of appeals of the State of West Virginia in writ of error an action of ejectment against the company, in which the validity of the S. H. G. Pennybacker deed to C. P. Huntington is in issue, and if it be held void and Laidley holds the legal title he holds it as trustee for the company, and in that event the prayer of the bill was that said Laidley be compelled to convey the legal title to said company and those holding under it. On the other hand, if said deed be held valid, that Laidley's deed be set aside as a cloud upon the title, and if entitled to neither relief that the $11,000 purchase-money be charged on the land for the benefit of the company, and that Laidley be enjoined from prosecuting his actions in ejectment against the company and its grantees until the matters above alleged can be determined in equity, and for general relief.

And the defendants say that at the following rule day, to wit,

at rules held in said clerk's office on the first Monday in
208 July, in the year 1887, the said John B. Laidley filed his separate answer to said bill of complaint, and in said answer the defendants say that he, the said John B. Laidley, denied the alleged superior equities of said company set up in said bill; denied that he, said Laidley, held said land as trustee for the use and benefit of said company; denied the said company's alleged equity to call on him for a conveyance to it of his legal title; denied that he bought said land with intent to defraud said land company or its grantees out of the same; denied that the said company had an equity to charge the $11,000 purchase money paid by C. P. Huntington as a lien upon said land; denied that the consideration paid by said Laidley was inadequate; denied that S. H. G. Pennybacker or that he, said Laidley, as her grantee, was liable legally, equitably, or morally to be charged personally with said $11,000; denied that S. H. G. Pennybacker or he, said Laidley, her grantee, was estopped by said void deed to C. P. Huntington, by any warranty therein, or by any act or word of hers in relation to said land from asserting title thereto, or that she or he, said Laidley, as her grantee, was estopped by her recognition of her sale to C. P. Huntington in her bill filed in 1882 against her husband to recover certain property and have it declared her separate estate; denied that her interest in the land in controversy was her sole and separate estate; denied that her title or right of action was barred by adversary possession; denied that Albert Laidley ever had any right, title, or interest, by purchase or otherwise, in the estate of S. H. G. Pennybacker; denied that he, J. B. Laidley, had any actual knowledge of the matters and things alleged in the Central Land Company's bill other than what he derived from the records in the county court clerk's office; denied that at the time of his purchase he made any false or fraudulent
representation to Mrs. Pennybacker about her title, estate,
209 or interest in said land; denied that he concealed from her the nature and extent of her rights and interests in said property; denied that she did not fully understand that her said deed was void, as to her, and that she had the right to recover the fee-simple therein; denied that no right, title, or interest passed to him, said Laidley, by her said deed. He denied that C. P. Huntington acquired an estate in fee or any other than the life estate of John M. Pennybacker by the deed of S. H. G. Pennybacker and John M. Pennybacker, dated February 25th, 1870; denied that C. P. Huntington by his deed dated October 16, 1871, conveyed to the Central Land Company any other than the life estate of John M. Pennybacker; denied that S. H. G. Pennybacker sold her estate to C. P. Huntington or joined in the execution of the deed to C. P. Huntington executed by Jno. M. Pennybacker and signed by her, bearing date the 25th day of February, 1870; and he, said Laidley, prayed in his answer that said Central Land Company's bill be dismissed.

The defendants say that afterwards, to wit, on the 21st day of March, 1888, said Central Land Company of West Virginia filed in the clerk's office of the circuit court of Summers county, State of

West Virginia, to which court said cause had been removed by leave of said court, its amended and supplemental bill in said suit in chancery, and defendants say that said amended and supplemental bill is identical in parties and in substance with the said original bill, except that it contains the allegation that since the filing of the original bill the supreme court of appeals of the State of West Virginia had decided that the deed to C. P. Huntington, signed by John M. Pennybacker and S. H. G. Pennybacker, dated February 25th, 1870, was void as far as it affected S. H. G. Pennybacker's interest in the land in controversy.

And defendants say that afterwards, on the 9th day of May, 1888, said John B. Laidley filed his separate answer in said circuit
210 court of Summers county to said amended and supplemental bill, and that said answer is in substance the same as his said answer to said original bill.

And the defendants say that afterwards, to wit, on the 14th day of May, 1888, the said suit in chancery was submitted to the said circuit court of Summers county, State of West Virginia, and was heard by said court upon said original bill and exhibits and the separate demurrers of John B. Laidley and Sarah H. G. Pennybacker and the answer of John B. Laidley to said bill, and upon the aforesaid amended and supplemental bill and exhibits of said Central Land Company of West Virginia and the separate demurrers thereto of John B. Laidley and Sarah H. G. Pennybacker, and upon the separate answer of John B. Laidley to said amended and supplemental bill and general replication to said answer, and upon the depositions filed in said cause and the former orders and decrees made therein, and said court overruled the demurrers of said J. B. Laidley, and it was after full argument considered by the court that the Central Land Company of West Virginia was not entitled to the relief prayed for, and it was adjudged, ordered, and decreed by said court that said company's original and supplemental bills be, and they were, dismissed at the costs of the said company.

The defendants say that said decree remains in full force and effect, not reversed or set aside, and said decree and judgment are conclusive between these defendants and the Central Land Company of West Virginia and C. P. Huntington, special receiver for said company, upon the title and right of possession to the land in controversy.

The defendants say that the matters and things alleged in the plaintiff's amended bill, so far as they affect the title of John B. Laidley and the claim of title of the Central Land Company of West Virginia to the land in controversy, were in issue and fully ad-
211 judicated against the Central Land Company by the judgment in ejectment and decree in chancery aforesaid, except certain allegations charging that John B. Laidley, by construction, was the confidential agent of C. P. Huntington at the time of his purchase of the land in controversy, all of which are fully denied by the answer of John B. Laidley and others accompanying this plea; and as to said allegations the defendants say they are cumulative in support of the charges and prayer of the original and amended and

supplemental bill of the Central Land Company hereinbefore set out, and are equally concluded by the judgment and decree aforesaid and denied by the answer.

The defendants say the prayer of the plaintiff's amended bill is identical in legal effect with the prayer of the original and the amended and supplemental bill of the Central Land Company, so far as it relates to the title to the land in controversy.

And the defendants say that the Central Land Company of West Virginia and the plaintiff, C. P. Huntington, special receiver for said company, are estopped by the judgment in ejectment and the decree in chancery hereinbefore set out to allege against the defendant John B. Laidley and the other defendants to this plea who are in privity with him, as the plaintiff hath alleged in his amended bill, that the Central Land Company of West Virginia, at the time of his, the plaintiff's, appointmont as its special receiver, had right of possession and title legal and equitable to the 240 acres of land in controversy or any part thereof, and are estopped to deny that John B. Laidley and the defendants to this plea who claim, in privity with him, part of said land, had right of possession and title legal and equitable by virtue of the judgment and decree aforesaid, and they plead said estoppel in bar of all the allegations of said amended bill which in any way affect the defendant's right
212 of possession and title of said land or any part thereof, and they pray the judgment of this honorable court whether they ought to make any other or further answer to said allegations of said amended bill.

The defendants, not waiving their plea to the plaintiff's amended bill, but still insisting and relying upon the same, for answer to so much of said amended bill as they are advised it is material for them to answer, say:

It is not true, as the plaintiff hath alleged, that defendant John B. Laidley and divers other persons combined, conspired, and confederated together to wrong, cheat, and defraud C. P. Huntington and the Central Land Company of West Virginia, and divers other persons to whom said land company had sold and conveyed lots and parcels of the said 240-acre tract of land in controversy, or either or any of them.

It is not true that said John B. Laidley purchased and bought said land from Sarah H. G. Pennybacker for the purpose of cheating and defrauding the Central Land Company and its grantees and those holding under them, or either or any of them, out of the property aforesaid.

The defendants say that there never existed at any time any state of circumstances out of which could arise an implied duty, obligation, or trust whereby said John B. Laidley was bound, either in the courts of law or in the courts of conscience, to inform C. P. Huntington or the Central Land Company of West Virginia of the defect in the acknowledgment of the deed of John M. Pennybacker and S. H. G. Pennybacker to C. P. Huntington, bearing date the 25th day of February, 1870, exhibited with plaintiff's amended bill as "Exhibit (B)", and which forbids him, said John B. Laidley, by

way of equitable estoppel or otherwise, to buy the lands therein described from S. H. G. Pennybacker and bring suit to recover the same.

The facts and circumstances of his purchase of said land
213 and his right and title thereto under his purchase are fully set out in the record of the judgment in ejectment of John B. Laidley against the Central Land Company of West Virginia, referred to in the defendant's plea, and a copy of which record is here filed as part of this answer in aid of said plea, marked "Exhibit (A 2)," and in the record of the decree in chancery in the suit also referred to in said plea, wherein The Central Land Company of West Virginia was plaintiff and John B. Laidley, C. P. Huntington, S. H. G. Pennybacker, and others were defendants, a copy of which record is herewith filed as part of this answer in aid of said plea, marked "Exhibit (B 2)."

Defendants say that John B. Laidley never acquired in a confidential way, or any other way, knowledge or information from his father, Albert Laidley, or from his father's papers of whatever description, that the certificate of acknowledgment of S. H. G. Pennybacker to C. P. Huntington was defective, and that it might be claimed that the said deed was void.

It is true that John B. Laidley in the year 1870 was a member of his father's family and resided with him in the little village of Barboursville, in the county of Cabell, State of West Virginia, and at the date of C. P. Huntington's alleged purchase had not arrived at his majority, nor was he at home or in the State. On the contrary, he was in attendance at the University of Virginia as a student, in the county of Albermarle, State of Virginia, whither he had been sent by his father in the month of April, in the year 1869, and where he remained until July in the year 1873 as a student at said college, and the last year he studied law and graduated under Dr. John B. Minor, except the summer vacation of 1871 or 1872, and he knew nothing about Sarah H. G. Pennybacker or her land or Huntington's purchase thereof until after the death of his father, in 1876.

214 Defendants say it is not true that John B. Laidley obtained his knowledge as to the execution and acknowledgment of deed from conversations with his father, Albert Laidley, who had never practiced law after the war between the States, being proscribed by the test oath, until after the Huntington purchase aforesaid, and he had no law office whatever after said war.

Defendants say that John B. Laidley never was a student of law under his father, never was a clerk or scrivener in his father's office, law or any other sort, never was occupant of the same room or rooms with his father, never was associated with him as partner or jointly in the transaction of law or any other business, nor in the examination of land titles or execution of deeds or other legal documents. There never was any sort of a business or other relationship between said John B. Laidley and his father, Albert Laidley, by, through, or from which the said J. B. Laidley gained any knowledge, by conversation or otherwise, of the purchase by C. P. Huntington of S. H. G.

Pennybacker of said land, or of her deed to him therefor. Said J. B. Laidley never, by virtue of any relationship with his father, had access to his father's papers, nor to his deeds or abstracts relating to the titles to land purchased by said Albert Laidley for C. P. Huntington; never had access to his papers, deeds, abstracts, or acknowledgments relating to the Pennybacker land aforesaid; never saw any of such papers until after the death of his father, in 1876, when said J. B. Laidley qualified as his administrator, and then only a memorandum or contract in a pocket memorandum book, signed by John M. Pennybacker for the sale to Albert Laidley of said Pennybacker tract of 240 acres of land.

And for his further answer to said amended bill the said John B. Laidley says that on the 10th day of September, 1890, he re-
215 covered seventeen separate judgments in separate actions in ejectment in the circuit court of Cabell county, State of West Virginia, as follows:

1. John B. Laidley against Wm. Duster.
2. Same against R. T. Harvey.
3. Same against Jackson Jasper and James Jasper.
4. Same against A. L. Williams.
5. Same against S. R. Hall.
6. Same against C. F. Remley and S. A. Remley.
7. Same against S. J. Love and Isadore Myers.
8. Same against Michael O'Brien.
9. Same against Albert Napier.
10. Same against S. F. Jobe's heirs.
11. Same against Clay Greenwell.
12. Same against Catherine Kneff.
13. Same against Margaret Sands.
14. Same against Charles Rose.
15. Same against J. M. Nobles.
16. Same against E. T. Mitchell's heirs.
17. Same against J. L. M. Curry.

And that in each said judgment he released to the respective defendants his title and interest in their respective lots upon the condition of their paying the amount of the original purchase-money of said lots to said Laidley, for which orders of sale were entered in each case.

Duly certified copies of the said several judgments and orders of sale are herewith filed as part of this answer, marked Exhibits Numbers 1 to 17, respectively.

The defendants say that the claimant- of said seventeen lots are respectively liable to said Laidley for the amount of the said
216 judgments respectively, and that the Central Land Company is liable to said respective owners for precisely the same amounts.

The defendants therefore pray that they be dismissed as to all matters alleged in said amended bill, except as to an account of said purchase-money judgments, and as to them they pray that a commissioner may ascertain the amount of said claims, and to whom

payable, and an account of the rents and profits, and will ever pray, etc.

JOHN B. LAIDLEY,
WM. S. LAIDLEY, *Trustee*,
THOS. J. BRYAN,
JAS. F. BROWN,
WM. E. CHILTON,
MARY E. CHILTON,
C. W. CAMPBELL,
F. L. DOOLITTLE,
S. E. DOOLITTLE,
C. E. GWINN,
O. E. GWINN,
W. W. GWINN,
R. A. GOODWINN,
GEO. F. DONELLA,
JAS. PRICHARD,
RUFUS SWITZER,
GARLAND BUFFINGTON,
LILIE HANDLEY,
W. R. GUNN,
W. H. H. HOLSWADE,
L. D. ISBELL,
OSCAR JONES,
MARIAM LAIDLEY,
LIZZIE MONTGOMERY,
JAS. K. ONEY,
GORDON O'BIERNE,
J. D. TERRELL,
JOHN T. WILSON,
THOS. H. HARVEY,
R. T. HARVEY,
J. E. ERWIN,
N. SMITH,
VESTA LAIDLEY,
Defendants,
BY COUNSEL.

JAMES F. BROWN,
WM. E. CHILTON,
CAMPBELL & HOLT, AND
JOHN B. LAIDLEY,
Counsel for Defendants.

217 J. H. HOLT,
W. E. CHILTON,
Counsel for Def'ts.

STATE OF WEST VIRGINIA, }
County of Wood, } *To wit:*

I, L. V. G. Morris, a notary public in and for said county, do certify that W. E. Chilton, whose name is signed to the foregoing plea and answer and who is named as a defendant therein, this day personally appeared before me, in my said county, and, being duly sworn, said that he is acquainted with the contents and allegations of said plea and said answer, and that the same are true in point of fact, and that said plea is not interposed for delay.

Taken, sworn to, and subscribed before me this 26th day of February, 1896.

[NOTARIAL SEAL.]

L. V. G. MORRIS,
Notary Public, Wood Co., W. Va.

I, W. E. Chilton, an attorney-at-law, practicing in the circuit court of the United States for the district of West Virginia and of counsel for defendants, do certify that, in my opinion, the foregoing plea is well founded in point of law.

—— ——.

218–222 EXHIBIT "A²" WITH ANSWER TO AMENDED BILL.

(Filed Feb'y 26, 1896.)

Record, Case No. 14755.

Supreme Court of the United States, October Term, 1891.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA, Plaintiff in Error,
vs.
JOHN B. LAIDLEY. } Term No., 1281.

In error to the supreme court of appeals of the State of West Virginia.

(Index omitted here in printing. See general index.)

223 Supreme Court of Appeals of West Virginia.

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA.

and

SAME
vs.
SAME.

Petition.

To the honorable the judges of the supreme court of appeals of West Virginia:

Petitioner, John B. Laidley, respectfully represents that he is aggrieved by a final judgment of the circuit court of Cabell county rendered on the 22d day of December, 1884, in the above entitled causes. A transcript of the record thereof is herewith presented.

The petitioner assigns the following errors therein:

1. The court erred in refusing to give the instructions asked for by the plaintiff stating the legal effect of the deed from John M. Pennybecker to C. P. Huntington, dated 25th day of Feb., 1870.

2. The court erred in rejecting testimony offered by the plaintiff, shown in exceptions 1 and 2.

3. The court erred in admitting testimony offered by the defendant, as shown in exceptions 3 and 4.

4. The court erred in refusing to grant a new trial.

5. Many other errors apparent on the face of the record.

Wherefore he prays a writ of error for said judgment, and that said judgment may be reviewed and reversed by this court.

And, as in duty bound, etc.

PETITIONER,
By COUNSEL.

J. F. BROWN, *Att'y.*

I, J. F. Brown, an attorney practicing in the supreme court of appeals of West Virginia, do certify that in my opinion it is proper that the judgment above complained of should be reviewed by said court.

J. F. BROWN.

Writ of error allowed in court, at Charleston, Oct. 23, 1886; bond, $200.

Attest: O. S. LONG, *Clk.*

Record.

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 22d day of December, 1885.

224 JOHN B. LAIDLEY *vs.* THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment.

and

JOHN B. LAIDLEY *vs.* THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment. Consolidated.

Be it remembered that heretofore, to wit:

At rules held in the clerk's office of the circuit court of Cabell county on the first Monday in April, 1882, came the plaintiff, John B. Laidley, to the first of the above causes and filed his declaration against the Central Land Company of West Virginia and others of a plea of trespass and ejectment; which declaration, notice thereof, and proof of service thereon endorsed *is* in the words and figures following, to wit:

STATE OF WEST VIRGINIA:

Circuit Court of Cabell County, to wit:

John B. Laidley, plaintiff, complains of The Central Land Company of West Virginia, a corporation of that name created and existing under and by virtue of the laws of the State of West Virginia, at the city of Huntington, county of Cabell, State aforesaid, and John Parsons, Wm. Bishop, W. O. James, Peter Durkin, Thos. P. Kettle, John Seymore, and Henry M. Taylor, defendants, of a plea of trespass.

For this, that, to wit:

On the 1st day of Feb., 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east by Seventh street, formerly known as the Beuhring lane, and extending beyond

Four-pole creek on the south, containing 240 acres, and more particularly described as follows:

Beginning at a stake, corner of lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links, N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links and another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, and allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the Nov. term, 1862, and
225 the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. G. Pinneybecker and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendants afterwards, to wit, on the 1st day of March, 1882, entered into the same and unlawfully withholds from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000; and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

To the Central Land Company of West Virginia, a corporation of that name created and existing under and by virtue of the laws of the State of W. Va., at the city of Huntington, county of Cabell, State aforesaid, and John Parsons, Wm. Bishop, W. O. James, Peter Durkin, Thos. P. Kettle, John Seymour, and Henry M. Tayler:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county, at rules to be held for said court on the first Monday in April, 1882, and that unless you appear and plead thereto within the time prescribed by law judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

(Endorsed.)

STATE OF WEST VIRGINIA, } *To wit:*
County of Cabell, }

Joseph S. Stewart, being duly sworn, said that he served the within declaration and notice upon John Parsons, Wm. Bishop, W. O. James, Peter Durkin, Thos. P. Kettle, and Henry M. Tayler by giving to each of them in said county a true copy of said declaration and notice on the 28th day of March, 1882, and that he served the

same upon John Seymore in said county, at his usual place of abode, by giving a copy of the said declaration and notice to Mrs. Seymore, wife of John Seymore, on the 28th day of March, 1882, and then and there explaining the purport thereof to her, he, said John Seymour, being absent from his usual place of abode, and she being found there and a member of his family and above the age of sixteen years, and that he served the said declaration and notice upon the within-named Central Land Company of West Virginia by giving a copy of said declaration and notice, on the 30th day of March, 1882, to John H. Oley, in said county, he being agent of said Central Land Company and resident of said county, D. W. Emmons, the superintendent and the only other officer of said Central Land Company residing in said county, being absent from said county at the time of said service.

JOSEPH S. STEWART.

Taken, sworn to, and subscribed before me, in my said county, on this 30th day of March, 1882.

THOS. W. TAYLOR, *N. P.*

226 And on the same day, to wit:

At rules held in the clerk's office of the circuit court of Cabell county on the first Monday in April, 1882, there was an order made in the first-named action which is in the words and figures following, to wit:

Declaration and notice filed, and rule against defendants to appear at May rules next to plead.

And on another day, to wit:

At rules held in the clerk's office of the circuit court of Cabell county on the first Monday in May, 1882, there was another order made in said first-named action, which is in the words and figures following to wit:

C. O. C.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 22*th* day of May, 1882, there was another order made in the first-named action, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA and Others.

In ejectment.

This day came the plaintiff, by his attorney, and thereupon the defendant The Central Land Company of West Virginia appeared, by its attorney, for the purpose of moving to quash the return on the declaration and notice herein, and, having made said motion, time is taken to consider of said motion.

And thereupon came the defendants John Parsons, William

Bishop, W. O. James, Peter Durkin, Thomas P. Kettle, John Seymore, and Henry M. Tayler, by their attorneys, and severally say that they are not guilty of unlawfully withholding the premises claimed by the plaintiff in the declaration; and of this they put themselves upon the country, and the plaintiff likewise.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 24th day of May, 1883, there was another order made in the said first-named action, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA and Others.

In ejectment.

This day came the parties, by their attorneys, and thereupon, the matters arising on the motion of the Central Land Company of West Virginia to quash the return of service on the declaration and notice herein, so far as the same relates to said company,
227 having been argued and considered, the court is of opinion to and doth accordingly sustain said motion and doth quash the said return; and thereupon this suit is abated as to said Central Land Company of West Virginia.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 26th day of May, 1882, there was another order made in said first-named action, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
PETER DURKIN and Others.

In ejectment.

This day came the parties to this action, by their attorneys, and thereupon, on motion of the defendants, it is ordered that the surveyor of this county do go upon the land described in the plaintiff's declaration herein and do such surveying as either party may require, and that he report his action in the premises to this court and accompany such report with nine fair plats, showing the surveying done by him. Before executing this order the said surveyor shall give twenty days' notice of the time and place of commencing such surveying to the parties to this action.

And on another day, to wit:

On the 26th day of November, 1883, James L. Thornburg, surveyor of Cabell county, filed in the clerk's office of the circuit court of Cabell county his report of survey under and by virtue of an

order of said court made in said first-named action; which report is in the words and figures following, to wit:

To the Honourable Ira J. McGinnis, judge of the circuit court of Cabell county, W. Va.:

JOHN B. LAIDLEY
vs.
PETER DURKIN and Others.

In ejectment.

In obedience to an order of the circuit court of Cabell county, made on the 26th day of May, 1882, the undersigned, surveyor of said county, after having given the parties the notice required, as shown by the annexed notice, with the acceptance thereon endorsed, did go upon the land described in the plaintiff's declaration on the 17th day of July, and at the request of the plaintiff, John B. Laidley, proceeded, on the 19th day of said month, to run the lines of said land as far as requested by said Laidley, and going to a place where a stake is called for, with certain sycamores as bearing trees, all of which are now gone—this place is designated on the plots by the letter (A)—but ascertaining the point as well as I could
228 from the old line fences, run with line fence, where it had not been moved away, N. 17 W., crossing the south side of Fifth avenue 177⅘ feet below the southwest corner of Fifth Ave. and Sixth street, and also crossing the south side of Second Ave. 295½ feet below the southwest corner of Second Ave. and Sixth street, and continuing to the bluff banks of the Ohio river 6,223 feet or 377⅙ poles; thence up the river N. 75¼ E. 784⅞ feet or 47 poles 14 links, the distance given; thence S. 17 E., crossing the south side of Second Ave. 9 feet below the southwest corner of Second Ave. and 7th street, and continuing 6,567 feet or 398 poles. These are all the lines the said Laidley wished me to run, but wanted me to represent on the plots, from the measurements he required me to make, all the streets, avenues, alleys, blocks, &c., of the city of Huntington that are included in the above survey, which the plots herewith filed will show has been done, and also to designate on the plots the lots that are built upon, which I have done by laying the same down and numbering the same on the plots. This is all the said plaintiff requested me to do.

At the request of H. C. Simms, att'y for the defendants, I have surveyed the house and curtilage of John Parsons on the survey situated on the south side of the "old pike," bounded as follows: Beginning at a bar post on the south side of the road and on the west side of the land, thence N. 69½ E. 100 feet, S. 17 E. 115 feet, S. 69½ W. 100 feet, N. 17 W. 115 feet to the beginning. This lot is marked (P) on the plots and is shaded in red; also the house and curtilage of Seymore, bounded as follows: Beginning at a point on the east side of the land, thence with said east line S. 17 E. 222 feet, S. 79 W. 125 feet, N. 14½ W. 214 feet, N. 75¼ E. 115 feet to the beginning. This lot is shown on the plots shaded in red and having

the name of Seymore in it. The said att'y, Simms, also requested a survey of the house and curtilage of Thos. Kettles, which survey I made as follows: Beginning at the N. W. corner of Thos. Kettles' field, shown on the plots near the point marked $\overset{a}{\wedge}$, running thence S. 10¾ E. 1,145 feet to the top of the ridge, thence S. 81 E. to the upper line, then going back to the beginning. I ran up the creek with Kettles' fence N. 64¾ E. 120 feet, S. 87¼ E. 145 feet, N. 77 E. 370 feet, S. 88½ E. 125½ ft. to the upper line; thence S. 17 E. 320 feet. There being no corner found at this point, I *protacted* the next two lines according to the courses given in the description of the land. This lot is shown on the plots with the name Thos. Kettles written in it, and is wholly on the south side of Four-pole creek.

Respectfully submitted.

J. L. THORNBURG, *Surveyor.*

(Endorsed:) 1883, November 26. Filed. M. S. Thornburg, clerk C. C. C. C.

The notice thereto attached is in the words and figures following, to wit:

229 To John B. Laidley, Peter Durkin, John Parsons, Wm. Bishop, W. O. James, Thos. P. Kettle, John Seymore, and Henry M. Tayler:

You are hereby notified that by virtue of an order of the circuit court of Cabell county, made on the 26th day of May, 1882, in an action of ejectment therein pending in which John B. Laidley is plaintiff and Peter Durkin and others are defendants, I will, on the 17th day of July, 1882, go upon the lands described in the plaintiff's declaration in said action and do such surveying as either of you may require.

JAMES L. THORNBURG,
Surveyor of Lands of Cabell County.

(Endorsed:) We accept service of the within notice. John B. Laidley, P. P. This 22nd day of May, 1882. Peter Durkin, John Parsons, Wm. Bishop, Thos. P. Kittle, W. O. James, John Seymore, and Henry M. Taylor, by Simms & Enslow, their att'ys.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 12th day of August, 1884, there was another order made in said first-named action, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
PETER DURKIN ET AL.

In ejectment.

The defendant Durkin having departed this life since the last term of this court, it is ordered that his death be suggested upon the record.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 12th day of December, 1884, there was another order made in said first-named action, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
PETER DURKIN ET AL.

In ejectment.

This day came the parties to this action, by their attorneys, and it appearing that the death of the defendant Peter Durkin was suggested upon the record at the last term of this court, and the said action not having been revived against his heirs, it is ordered that this suit be abated as to him.

And on the same day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 12th day of December, 1884, there was another
230 order made in said first-named action, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA, PETER DURKIN, John Parsons, Wm. Bishop, W. O. James, Thos. P. Kettle, John Seymore, and Henry M. Tayler.

In ejectment.

This day again came the parties, by their attorneys, and thereupon came the Central Land Company of West Virginia, which is the lesser of the several aforesaid defendants, by its attorneys, and on its motion it is made defendant in this action in the place of its aforesaid lessees, John Parsons, William Bishop, W. O. James, Thos. P. Kettle, John Seymore, and Henry M. Tayler, and thereupon the said Central Land Company of West Virginia says it is not guilty of unlawfully withholding the premises claimed by the plaintiff in his declaration; and of this the said company defendant puts itself upon the country and the plaintiff doth likewise.

The plaintiff objected to the motion of the Central Land Company to be substituted in place of the defendants, and the objection was overruled, and plaintiff objects to the entering of the above order,

which objection the court overruled and directs the order to be entered, and plaintiff excepts.

Be it remembered that heretofore, to wit:

At rules held in the clerk's office of the circuit court of Cabell county on the first Monday in October, 1882, came John B. Laidley, plaintiff to said last-named action, and filed his declaration against the Central Land Company of West Virginia of a plea of trespass and ejectment, which declaration, notice thereof, and proof of service thereon endorsed *is* in the words and figures following, to wit:

STATE OF WEST VIRGINIA:

Circuit Court of Cabell County, to wit:

John B. Laidley, plaintiff, complains of the Central Land Company of West Virginia, a corporation of that name created and existing under and by virtue of the laws of the State of West Virginia, having its chief office at the city of Huntington, in the county and State aforesaid, for this, that, to wit, on the 1st day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east, in part, by Seventh street, formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows:

231 Beginning at a stake, corner of lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links, N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links and another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, south 70 W. 50 poles to a black oak and a white oak on a point, S. 11¼ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. Pinneybecker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendants afterwards, to wit, on the 1st of March, 1882, entered into the same and unlawfully withhold from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000; and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

Notice.

To the Central Land Company of West Virginia, a corporation of that name created and existing under and by virtue of the laws of the State of West Virginia, having its chief office at the city of Huntington, in the county and State aforesaid:

You are hereby notified that the foregoing declaration in ejectment will be filed against you at rules to be held in the clerk's office of the circuit court of Cabell county on the first Monday of October, 1882; and unless you appear and plead thereto within the time prescribed by law, judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

(Endorsed.)

I served the within declaration and notice upon the Central Land Company of West Virginia by giving to D. W. Emmons a true office copy of the same on the 19th day of Sept., 1882, in the county of Cabell and State of West Virginia, he, the said Emmons, being then and there a resident of said county and the superintendant and chief officer of said company and its only chief officer resident in said State.

E. KYLE, *S. C. C.*

E. S. BUFFINGTON, *Dep'ty.*

232 And on the same day, to wit:

At rules held in the clerk's office of the circuit court of Cabell county on the first Monday in October, 1882, there was an order made in the said last-named action, which is in the words and figures following, to wit:

"Declaration and notice filed and C. O."

And on another day, to wit:

At rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1882, there was another order made in said last-named action, which is in the words and figures following, to wit:

Def't appeared by attorney and plead not guilty.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 24th day of November, 1882, there was another order made in said last-named action, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA.

In ejectment.

The plaintiff having served his declaration and notice upon the defendant and having filed the same at rules and with proof of

service thereof, and a rule having been awarded upon the defendant to plead at rules, and the defendant having appeared and plead to the said declaration, *and* now, on motion of the plaintiff, the surveyor of this county is ordered to go upon the lands in the declaration mentioned and make and return a report and plat of such surveying as either may require, and said surveyor shall give ten days' notice of the time and place of commencing said surveying to the parties or their attorneys.

And on another day, to wit:

On the 27th day of August, 1883, the surveyor of Cabell county filed his report in the clerk's office of the circuit court of Cabell county, which report is in the words and figures following, to wit:

To the Honourable Ira J. McGinnis, judge of the circuit court of Cabell county, W. Va.:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND CO. OF WEST VIRGINIA.

In ejectment.

In obedience to the annexed order of the circuit ct. of Cabell county, the undersigned, surveyor of said county, after having
234 given the parties the notice as required by said order, went upon the land mentioned in the plaintiff's declaration on the 18th day of June, 1883, and reports his proceedings as follows: The plaintiff required me to locate and plot the east line of the land from the Ohio river to Four-pole creek, and, as I had run said line a little while ago and found its bearing S. 17 E. from the river to the creek, I did not re-run it, but show in the accompanying plot that this line will cut the south side of Second avenue in Huntington 9 feet below the southwest corner of Second Ave. and Seventh street.

The defendants did not require any surveying.

Respectfully submitted.

JAMES L. THORNBURG,
S. of L., C. C., W. Va.

(Endorsed:) 1883, August 27. Filed. M. S. Thornburg, clerk C. C. C. C.

(See map on next page.)

(Here follows map marked page 233.)

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 12th day of December, 1884, there was an order made in these causes, which is in the words and figures following, to wit:

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

JOHN B. LAIDLEY
vs.
CENTRAL LAND COMPANY OF WEST VIRGINIA.

In ejectment.

JOHN B. LAIDLEY
vs.
CENTRAL LAND COMPANY OF WEST VIRGINIA.

In ejectment.

This day came the parties to the two above-entitled actions, by their attorneys, and, it appearing from an inspection of the record thereof that the said two actions are now pending in this court between precisely the same parties, and that there are no other parties to either of said actions who are not parties to the other, and both actions involve precisely the same land, on motion of the defendants, it is ordered that both of the aforesaid actions be, and the same are hereby, consolidated, and that they be hereafter proceeded with as one action; and thereupon the defendant, for plea to said consolidated action, say- that it is not guilty of unlawfully withholding the premises claimed by the plaintiff in his declaration; and of this the defendant puts itself upon the country, and the plaintiff likewise.

The plaintiff, by counsel, upon the hearing of the aforesaid motion, objected thereto and — the consolidation of said suits and to
235 the recitals contained in this order and to the entry of this order, each of which objections the court overruled, and the plaintiff excepts to said rulings and each of them.

And on the same day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 12th day of December, 1884, there was another order made in these causes, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment. Consolidated.

This day again came the parties, by their attorneys, and thereupon came a jury, to wit, Charles M. Wilson, John Clouch, Henry C. Stephenson, George W. Bayless, Thornton Carter, J. C. Decan, Vincent Cooper, Salem G. Carter, John A. Morris, Anthony Bicker, Levi Toppin, and Wm. H. Harrison, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein between the plaintiff and defendant and

a true verdict render according to the evidence; and the jury sworn and impaneled as aforesaid having heard part of the evidence, they were, with the consent of parties, adjourned by the court until to-morrow morning at 9 o'clock.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 13th day of December, 1884, there was another order made in these cause-, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND COMPANY OF WEST VIRGINIA } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment. Consolidated.

This day came the parties, by their attorneys, and the jury sworn and impaneled upon the trial of this cause on yesterday again this day appeared in court pursuant to adjournment on yesterday, and the jurors sworn and impaneled upon the trial of this cause as aforesaid having further heard the evidence, they were, by consent of parties, adjourned by the court until Monday morning next at 9 o'clock.

236 And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 15th day of December, 1884, there was another order made in these causes, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND COMPANY OF WEST VIRGINIA } In Ejectment.

and

JOHN B. LAIDLEY
vs.
CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment. Consolidated.

This day came the parties, by their attorneys, and the jury that was sworn and impaneled upon the trial of this cause on a former day of the present term of this court this day appeared in court pursuant to adjournment on Saturday last, and the jurors *who* sworn and empaneled as aforesaid having further heard the evidence, they were, with the consent of parties, adjourned by the court until tomorrow morning at 9 o'clock.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 16th day of December, 1884, there was another order

made in these causes, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND COMPANY OF WEST VIRGINIA } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment. Consolidated.

This day came the parties, by their attorneys, and the jury that was sworn and empaneled in this court on a former day of the present term this day appeared in court pursuant to adjournment on yesterday, and, having further heard the evidence, the jury was adjourned by the court until tomorrow morning at 9 o'clock.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 17th day of December, 1884, there was another order made in these causes, which is in the words and figures following, to wit:

237 JOHN B. LAIDLEY
vs.
CENTRAL LAND COMPANY OF WEST VIRGINIA } In Ejectment.

and

JOHN B. LAIDLEY
vs.
CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment. Consolidated.

This day came the parties, by their attorneys, and the jury that was sworn and impaneled upon a former day of the present term of this court upon the trial of this cause this day appeared in court pursuant to adjournment on yesterday, and the jury, having fully heard the evidence and the arguments of counsel, on their oaths do say: "We, the jury, find for the defendants."

Whereupon the plaintiff moved the court to set aside the verdict of the jury rendered herein and grant him a new trial of the cause; of which motion the court takes time to consider.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 22nd day of December, 1884, there was another order made in these causes, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND COMPANY OF WEST VIRGINIA } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment. Consolidated.

This day came the parties by their attorneys, and the court having fully heard the plaintiff's motion to set aside the verdict of the jury rendered herein upon the grounds stated in the bill of exceptions, being argued and submitted, is overruled by the court.

Therefore it is considered by the court that the plaintiff take nothing by his bill, but, for his false clamor, he in mercy, &c., and that the defendant recover against the plaintiff its costs by it about its suit in this behalf expended, including $10.00, as allowed by statute.

(*Memorandum.*)

Be it remembered that upon the trial and hearing of this cause the plaintiff tendered his bill of exceptions to the opinions, rulings, and decisions given by the court upon the trial upon said cause, which bill of exceptions is in the *the* words and figures following, to wit:

238 JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment. Consolidated.

Be it remembered that upon the trial of these consolidated actions the plaintiff, to maintain the issue joined therein on his part, introduced and read in evidence to the jury the following deeds, records, and writings, to wit:

1. A deed from George N. Brown to Richard Brown and Benjamin Brown, dated the 17th day of January, 1812, and the certificate of acknowledgement thereon endorsed, in the words and figures following, to wit:

This indenture, made this seventeenth day of January, in the year one thousand eight hundred and twelve, between George Newman Brown, of the county of Prince William and State of Virginia, of the one part, and Richard Brown and Benjamin Brown, both of the county of Cabell and State aforesaid, of the other part,

Witnesseth, that the said George N. Brown, for and in consideration of the sum of one dollar, to him in hand paid by the said Richard and Benjamin Brown, the receipt whereof is hereby acknowl-

edged, hath granted, bargained and sold, and by these presents doth grant, bargain and sell, conjointly, to the said Richard Brown and Benjamin Brown all my right, title and estate in and to a certain tract or parcel of land lying, being and situate in the county of Cabell, and bounded as follows, viz: Beginning at the maple and elm on the upper side of a small drain and a sugar tree on the top of the bank of the River Ohio and lower side of said drain, corner to the land sold by Hampton to Manoah Bostick; thence leaving the river with Bostwick's line S. 21° E. 378 poles (crossing Four-pole creek at 358 poles) to a beech on the original military line, thence with said line N. 81° W. 113 poles to a large sycamore and small elm, thence N. 19 E. 295 poles to an elm, ash and hickory, thence up the river by its meanders to the beginning; containing two hundred acres: to have and to hold the said tract or parcel of land, with all and singular the appurtenances thereunto belonging, the said Rich'd Brown and Benjamin Brown, jointly, to them and their heirs or assigns forever.

In witness whereof I have hereunto set my hand and seal the day and year above written.

GEORGE N. BROWN. [SEAL.]

In presence of—
WILLIAM BROWN.
ROB BROWN.
WILLIAM RENO.

239 PRINCE WILLIAM COUNTY COURT, *February 3rd*, 1812.

This deed from George N. Brown to Richard Brown and Benjamin Brown was proved by the oaths of Robert Brown and William Renx and ordered to be certified.

And at a court of quarterly sessions held for s'd county March 2d, 1812, the said deed was fully proved by the oath of William Brown and ordered to be certified to the county court of Cabell, to be there recorded.

A copy.
Teste: I. WILLIAMS, *Cl. Court.*

At a court held for Cabell county on Tuesday, the 28th day of April, 1812:

A deed from George Newman Brown to Richard Brown and Benjamin Brown was presented in court, the proof whereof having been certified by the clerk of Prince William county, which this court think sufficient testimony, and the same is ordered to be recorded.

A copy.
Teste: EDW'D MORRIS, *C. C. C.*

2. The last will and testament of said Benjamin Brown and the certificate of the probate thereof in the words and figures following, to wit:

In the name of God, I, Benjamin Brown, of Cabell county, in view of my approaching dis-olution—as it is certain all must die—do hereby make this, my last will and testament.

I am satisfied with the distribution of what property I have been blessed with which the law has made; but I am desirous to emancipate two of my slaves for their fidelity, that is Edmund and his wife, Seller.

I therefore direct, at the end of next year, after the crops of wheat and corn *is* perfectly secured, that my servants, Edmund and his wife, Seller, be emancipated and set free and that my executor attend and see that they be discharged, with proper authority for their freedom.

I hereby appoint my beloved son, James H. Brown, the executor of this, my last will and testament.

Given under my hand this 14th day of September, 1848.

his
BENJAMIN x BROWN.
mark.

Signed in the presence of us.
J. LAIDLEY.
GERARD C. RICKETTS.

CABELL COUNTY COURT, *October 24th*, 1848.

The last will and testament of Benjamin Brown, deceased, was this day presented in court and proved by the oaths of J. Laidley and Gerard C. Rickets, and ordered to record.

Teste: JOHN SAMUELS,
Clerk Cabell County Court.

240 3. A deed from James H. Brown and others to Albert Laidley, dated the 29th day of December, 1848, and the certificate of acknowledgment thereon endorsed, in the words and figures following, to wit:

This inden'ure, made and entered into this 29th day of December, in the year one thousand, eight hundred and forty-eight, between James H. Brown and Louisa, his wife, Robert Osburn and Josephine, his wife, and Ceres Brown, parties of the first part, and Albert Laidley, of the second part,

Witnesseth, that the said parties of the first part, for and in consideration of the sum of six thousand, four hundred dollars, to them in hand paid by the said Albert Laidley, the receipt whereof is hereby acknowledged, they have given, granted, bargained and sold, and, by these presents, do give, grant, bargain and sell unto the said Albert Laidley, his heirs and assigns, forever, two certain tracts or parcels of land, situated, lying and being in Cabell county, on the Ohio river and the adjoining hill; that is to say, two hundred acres, being the west half of lot No. 37 in the Savage grant, which was assigned to James Samuel, being the same land which George N. Brown conveyed to Richard and Benjamin Brown, by deed recorded in the office of Cabell county court and which Richard Brown conveyed to the said Benjamin Brown in his lifetime, and is the same

upon which the s'd Benjamin Brown lived and died in actual occupation of. Also, a tract of land situate and a-joining the above on the south side thereof, being the residue not heretofore sold and conveyed, of a tract of land which Benjamin Brown purchased of Summers & Bostick, as agents for James T. Watson, containing about — acres. Also, all the right, title and interest of the said parties of the first part in and to a certain tract or parcel of land, situate and lying on Four-pole creek, in the county afsd., between the two tracts of land hereinabove mentioned and conveyed by them, the said parties of the first —, inherited from the said Benjamin Brown, dec'd, and which said tract contains, by estimation, — acres, and was patented to P. Scales, Noah Scales, Wm. Buffington and Henry Brown, by patent, bearing date Jan'y 10th, 1810; to have and to hold the above-described two tracts of land with all and singular its appurtenances, unto the said Albert Laidley, his heirs and assigns forever; it being the intention of the contracting parties to sell and convey by the parties of the first part unto the said Albert Laidley all the right, title, interest and estate which they, the said parties of the first part, inherited as the heirs-at-law of Benjamin Brown, dec'd, in and to the moi-ty of lot No. 37 in the Savage grant and the hill land adjoining thereto, whether purchased of James T. Watson singly, or together with Richard Brown, or which the said Benjamin Brown held in his lifetime by patent or otherwise, be it more or less. And the said parties of the first part, for themselves and their heirs, do covenant and agree to and with the said Albert Laidley that they, the said parties of the first part will warrant and forever defend the right to the above-described tracts of lands,
241 free from the claim or claims, or either of them, as well from all persons claiming from, thro' or under them, or either of of them.

In testimony whereof they have hereunto set their hands and seals the day and year first above written.

JAMES H. BROWN. [SEAL.]
LOUISA M. BROWN. [SEAL.]
ROBERT OSBORN. [SEAL.]
JOSEPHINE OSBORN. [SEAL.]
CERES BROWN. [SEAL.]

CABELL COUNTY, *sc:*

We, Wm. Buffington and Fred'k G. L. Beuhring, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that James H. Brown and Ceres Brown, parties to a certain deed bearing date on the 29th of December, 1848, and hereunto annexed, personally appeared before us in our county aforesaid and acknowledged the same to be their act and deed and desired us to certify the said acknowledgement to the clerk of the county court of Cabell county, in order that the said deed may be recorded.

Given under our hands and seals this 1st day of January, 1849.

WM. BUFFINGTON. [SEAL.]
FRED'K G. L. BEUHRING. [SEAL.]

CABELL COUNTY, *ss:*

We, William Buffington and Fred'k G. L. Beuhring, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that Louisa Brown, wife of James H. Brown, parties to a certain deed bearing date on the 29th day of December, 1848, and hereunto annexed, personally appeared before us in our county aforesaid, and, being examined by us privily and apart from her husband and having the deed aforesaid fully explained to her, she, the said Louisa, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same; that she wished not to retract it.

Given under our hands and seals this 1st day of January, 1849.

WM. BUFFINGTON. [SEAL.]
FRED'K G. L. BEUHRING. [SEAL.]

MASON COUNTY, *sc:*

We, Robert Mitchell and Michael Kouns, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that Robert Osborn, party to a certain deed bearing date on the 29th day of December, 1848, and hereunto annexed, personally appeared before us in our county aforesaid and acknowledged the same to be his act and deed, and desires us to certify the said acknowledgement to the clerk of the county court of Cabell county, in order that said deed may be recorded.

Given under our hands and seals this 8th day of January, 1849.

R. MITCHELL, *J. P.* [SEAL.]
MICHAEL KOUNS, *J. P.* [SEAL.]

242 MASON COUNTY, *sc:*

We, Robert Mitchell and Michael Kouns, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that Joseph- Osborn, wife of Robert Osborn, parties to a deed bearing date on the 29th day of December, 1848, and hereunto annexed, personally appeared before us in our county aforesaid, and, being examined by us privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the s'd Josephine, acknowledged the same to be her act and deed, and declared that she had willing- signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this eighth day of December, 1849.

R. MITCHELL, *J. P.* [SEAL.]
MICHAEL KOUNS, *J. P.* [SEAL.]

CABELL COUNTY COURT CLERK'S OFFICE, *Feb'y* 16, 1849.

The foregoing deed, with the certificate annexed, was this day presented to me, the clerk of Cabell county court, for record. The same is admitted thereto.

Teste: JOHN SAMUELS, *C'k C. C.*

4. A deed from A. Laidley and wife to Isaac Frampton, dated the 6th day of November, 1856, and the certificate of acknowledgment thereon, in the words and figures following, to wit:

This deed, made and entered into this 6th day of November, in the year one thousand eight hundred and fifty-six, between Albert Laidley and Vesta, his wife, of the county of Cabell, of the first part, and Isaac Frampton, of the second part,

Witnesseth, that the said Laidley and wife, for and — consideration of the sum of seventeen thousand dollars, to them in hand paid, the receipt whereof is hereby acknowledged, they have given, granted, bargained and sold, and by these presents do give, grant, bargain and sell, unto the said Isaac Frampton, the three several tracts or parcels of land, situate, lying and being in the county of Cabell, on the Ohio river and the left-hand fork of Four-pole, and more particularly described as follows, to wit: One moi-ty of lot 37 in the military grant to Capt. John Savage and others, as divided by commissioners, and their report and plat of survey is recorded in the clerk's office of Cabell county court and designated as the share of James Samuels, and being the lower half and decreed by the chancery court, as appears by said record, to Richard and Benjamin Brown; bound on the north by the Ohio river, the lands of Isaac Frampton, on the *the* west by Four-pole creek, on the south and on the east by the lands of *T.* G. F. Beuhring, and containing two hundred acres, be the same more or less. Also one other tract adjoining thereto and bounded as follows, viz: Beginning at a white oak, two beeches, at the end of eight poles, S. 21 E. 8 po. from the southeast corner of the two hundred acres above granted on a line of the Watson tract, thence with the same S. 68 W. 190 po. to a black oak, white oak & hickory on the top of a ridge,
243 corner to John Holenback, thence leaving Watson's line S. 63 po. to two double hickories and an ash, N. 86 W. 12 poles to two black oaks on a ridge, S. 5 W. 34 po. red oak on a point, S. 45 E. 14 po. to two chestnut oaks on a cliff of rocks, S. 32 W. 70 po. to a mulberry on the bank of the creek, S. 30 E. 72 po. to two hickories on the top of the hill, N. 55 E. 48 po. to two white oaks on the same hill, S. 54 E. 64 po. to two black oaks on Beuhring's line, thence N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 po. to the beginning; containing two hundred and fifty acres, more or less. Also, one other tract, beginning at a gum on Four-pole creek, thence N. 80 W. 57 p. and 5 links to a white oak, S. 75 W. 92 po. to a beech on the bank of the creek, S. 17 E. 70 po. to a stake by a drain, S. 83 E. 125 po. to a black oak, white oak and hickory, N. 68 E. 190 po. to a white oak and two beeches, N. 21 W. 8 po. to the southeast corner of the two-hundred-acre lot first granted above and with the line thereof to the beginning. This description includes ten acres of land heretofore conveyed by the said Laidley to the said Frampton, containing by this conveyance one hundred and forty acres, more or less, to have and to hold the three several tracts of land above described, with all and singular the appurtenances, unto

the said Isaac Frampton, his heirs and assigns forever; and the s'd Albert Laidley and Vesta, his wife, for themselves and their heirs, doth covenant and agree to warrant and forever defend the right and title to the above-described three tracts of land, containi-g five hundred and eighty-nine acres more or less, unto the said Isaac Frampton, his heirs, forever.

In testimony whereof, the said Albert Laidley and Vesta, his wife, have hereto set their hand- and seals the date above written.

ALBERT LAIDLEY. [SEAL.]
VESTA LAIDLEY. [SEAL.]

CABELL COUNTY, *To wit:*

I, Fred'k G. L. Beuhring, a justice in the county aforesaid, in the State of Virginia, do hereby certify that Albert Laidley, party to a certain deed bearing even date with these presents and hereunto annexed, personally appeared before me in my county aforesaid and acknowledged the same to be his act and deed.

Given under my hand and seal this 6th day of November, 1856.

FRED'K G. L. BEUHRING. [SEAL.]

CABELL COUNTY, *To wit:*

We, St. Mark Russell and Fred'k G. L. Beuhring, justices of the county aforesaid, in the State of Virginia, do hereby certify that Vesta Laidley, wife of Albert Laidley, parties to a deed bearing date the 6th day of November, 1856, and hereto annexed, personally appeared before us in our county aforesaid, and, being examined by us privily and apart from her husband and having the deed aforesaid fully explained to her, she, the said Vesta Laidley, acknowledged the same to be her act and deed, and declared that she
244 has willingly signed, sealed, and delivered the same, and that she wishes not to retract it.

Given under our hands and seals this 6th day of November, 1856.

S. M. RUSSELL, *J. P.* [SEAL.]
FRED'K G. L. BEUHRING. [SEAL.]

CABELL COUNTY COURT CLERK'S OFFICE, *June 25th*, 1857.

This deed from Albert Laidley and wife to Isaac Frampton was this day presented to me, the clerk of Cabell county court, together with the certificate of acknowledgements thereon endorsed. The same is admitted to record.

Teste: JOHN SAMUELS, *Cl'k.*

5. The last will and testament of Isaac Frampton, and the certificate of the probate thereof, in the words and figures following, to wit:

In the name of God, amen; I, Isaac Frampton, of the county of Cabell and State of Virginia, being of sound mind and memory, and considering the uncertainty of this frail and transitory life, do, therefore, make, ordain, publish, decre- this to be my last will and testament; that is to say: First, after all my lawful debts are paid

and discharged, I direct my executors, who are hereafter named, first, to have my body inter-ed beside the remains of my father and mother; then to enclose the grave with an iron railing, having first erected a neat tombstone over my remains. I give and bequeath to Charles T. Everett the entire use, control and benefit of my whole landed estate, proceeds of the present year's crops, all moneys due by note, account or otherwise for the next two ensuing years, the moneys, notes, accounts, &c., with my sorrel filley and my bed and bedding, to be his forever. I next give and bequeath to my sister, Rebecca J. Everett, the forty-acre field, including the two lots and houses now occupied by P. H. McCullough, bounded on the east by the farm of the late F. G. L. Buring, on the south by the James river and Kanawha turnpike, on the west by the land running from said turnpike to the Ohio river, and on the north by the Ohio river, to be hers forever. Then, at the expiration of the two years above mentioned, I give and bequeath the residue of my lands estate to be divided equally between David Frampton, Hyram Frampton and Charles T. Everett, by each one paying to Ephriam Frampton the sum of one hundred dollars. Likewise, I make, constitute and appoint Charles T. Everett and P. H. McCulough to be executors of this, my last will and testament, hereby revoking all former wills by me made.

In witness whereoff, I have hereunto subscribed my name and affixed my seal this 27 day of September, 1860.

his
ISAAC x FRAMPTON. [SEAL]
mark.

Teste: P. H. McCULLOUGH.
ROBERT REYNOLDS.

245 CABELL COUNTY COURT CLERK'S OFFICE, *Oct.* 1*st*, 1860.

The last will and testament of Isaac Frampton, dec'd, was this day presented in court. The same is ordered to be recorded.

A copy.
Teste: H. H. WOOD, *Cl'k.*

6. A decree of the circuit coert of Cabell county, rendered in the chancery order book of the said court on the 27th day of March, 1863, in the words and figures following, to wit:

P. H. McCULLOUGH and E. M. FRAMPTON, Compl., *vs.* REBECCA EVERETT and Oth's. } In Ch'y.

The commissioners appointed by an order made in this cause at the November term, 1862, having made their report of the parti-ons — survey and settlements of the accounts for rents, the same is ordered to be filed; and now, at this day, this cause came on to be farther heard upon the papers form-ly read, the reports of the commissioners and the surveyor, and to which there has been no objections, and being argued by counsel, upon consideration, it is adjudged,

ordered, and decreed that the report of the parti-ons and surveys and settlements of accounts for rents be, and the same is, approved and confirmed; and it is further ordered and decreed that the several parties be quieted in possession of the several lots to them severally assigned, and that the parties in whom the legal title is vested do forthwith prepare, execute, and acknowledge for record apt and proper deeds conveying and releasing to each other as they have been assigned by said commissioner by the surveyor's description thereof, and upon their failure to do so within 30 days after the rising of this court that John Laidley, who is hereby appointed a special commissioner for that purpose, do in like manner prepare, execute, and acknowledge for record for and in the name and behalf of the said parties apt and proper deeds of conveyance and relinquishment, with mutual covenants of general warrantee, and a fee of $3 for each deed is allowed him, to be paid by the pl'ffs and taxed in the bill of costs; and it is further decreed that the surveyor's report be received; and it is further adjudged, ordered, and decreed that the defendant Rebecca Everett do pay to the pl'ffs the sum of $564.56½ cents, as reported by the commissioners and by them applied as further reported, to wit:

For the payment of the costs of this suit	$170 75c.
" the payment of E. M. Frampton	183 12½
" " " " P. H. McCullough	69 76

and for the collection of which the pl'ffs may have process of execution, and liberty is reserved to parties entitled to part of this fund to apply for process against the pl'ffs to compel them to pay over the same, as above directed, or any part thereof when by them collected.

246 7. An order of said court made at the same term in relation to the destruction of the record of the court in the words and figures following, to wit:

It appearing to the court that so much of the chancery order book of this court that contained the March term, 1862, proceedings, and also the proceedings of the Nov. term, 1862, have been destroyed and lost, it is thereupon ordered that the clerk of this court do re-enter all the orders and decrees and other proceedings of said terms in the chancery order book of this court as far as he may — the means by any writing to ascertain the matter that was in said book, and for which services the clerk of this court shall be allowed the sum of — dollars, which is ordered to be certified to the *the* county court of Cabell county for payment.

8. A deed from Rebecca J. Everette to Sarah H. G. Pennybacker, dated the 18th day of August, 1865, and the certificate of acknowledgement thereon endorsed, in the words and figures following, to wit:

Know all men by these presents:

That I, Rebecca J. Everett, of the county of Lawrence and State of Ohio, for and in consideration of eight thousand dollars, to me in hand paid by Mrs. Sarah H. G. Pennybacker, of Wood county,

W. Va., have bargained and sold, and by these presents grant, bargain, sell — convey, unto the said S. H. G. Pennybacker the following-described real estate, situate in Cabell county, W. Va., to wit: Being lot No. 4 in the division of a tract of land inherited from Isaac Frampton, Jr., by Ephriam M. Frampton, David Frampton, Hiram Frampton and the said Rebecca J. Everett, and by and in accordance of decrees of the circuit court of Cabell county, Va., dated respectively Nov., 1862, and March, 1863, John Laidley, a special commissioner, appointed for the purpose of deeding said tract, did accordingly deed to the said R. J. Everett the following-described tract, which is now by her deeded to the said Sarah H. G. Pennybacker, to wit: Beginning at a stake, corner of lot No. 3 on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. two poles and three links, N. 70¾ E. 1 pole and 24 links to a stake, from which the above sycamore stands N. 33 W. 3 poles and 7 links, and another stands 52½ E. 3 poles and six links, thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the S. E. corner of the Brown tract, thence N. 19 W. 398 poles to a stake on Ohio river, S. 73 W. 47 poles and 14 links to the place of beginning; containing 240 acres, more or less; to have and to hold the premises aforesaid, unto the *the* said Sarah H. G. Pennybacker, her heirs and assigns, forever. And the said Rebecca J. Everett, for herself, her heirs and assigns, covenants with the said Sarah H. G.
247 Pennybacker, that she is lawfully seized of the premises aforesaid, that the premises and appurtenances are free and clear from all incumbrance, and that she will forever warrant and defend the same to the said Pennybacker, her heirs and assigns, against the lawful claims of all persons whomsoever.

In witness whereof, I have hereunto set my hand and seal this 18th day of August, A. D. one thousand, eight hundred and sixty-five.

R. J. EVERETT. [SEAL.]

In presence of—
JAMES A. BARTRAM.
JENNIE RANIE.

[Revenue stamp, $8.00.]

STATE OF OHIO, *Lawrence County,* } *ss:*

Before me, the undersigned authority in and for said county, personally came the above-named Rebecca J. Everett and acknowledged the signing and sealing of the foregoing conveyance to be her voluntary act and deed this 18th day of August, 1865.

[Notarial Seal, Lawrence County, Ohio.]

JAMES A. BARTRAM,
Notary Public, Lawrence County, Ohio.

RECORDER'S OFFICE, }
Cabell County, West Virginia, } *ss:*

This deed, from Rebecca J. Everett to S. H. G. Pennybacker, was this day presented to me, the recorder of the county and State aforesaid, together with the certificate of acknowledgement thereon endorsed. The same is admitted to record.

Given under my hand this 7th day of Feb'y, 1866.

THOS. J. F. HAYSLIP, *Dept.*,
For THOS. J. HAYSLIP, *Recorder.*

9. A deed from Sarah H. G. Pennybacker to the plaintiff, John B. Laidley, dated the 26th day of January, 1882, and the certificate of acknowledgement thereon endorsed, in the words and figures following, to wit:

This deed, made this 26th day of Jan'y, 1882, between Sarah H. G. Pennybacker, of the first part, and John B. Laidley, of the second part,

Witnesseth, that the said party of the first part, for and in consideration of the sum of five hundred dollars, the receipt whereof is hereby acknowledged, does grant unto the party of the second part, and doth bargain, sell, and convey unto him all that certain tract of land situate in the city of Huntington, county of Cabell, and State of West Virginia, containing 240 acres, known as lot No. 4, in the partition of the estate of Isaac Frampton, Jr., deceased, and conveyed to the said Sarah H. G. Pennybacker by Rebecca J.
248 Everett by deed bearing date the 18th day of August, A. D. 1865, and recorded in the county court clerk's office of Cabell county, Deed Book (A), page 236; for further description reference is made to said deed. Reserving one acre, including the brick house on Fifth avenue. And the said party of the first part does hereby covenant with the party of the second part, that she will warrant generally the property hereby conveyed.

Witness the following signature and seal.

S. H. G. PENNYBACKER. [SEAL.]

THE STATE OF WEST VIRGINIA, }
Cabell County, } *ss:*

I, F. F. McCullough, a notary public in and for the county aforesaid, do certify that S. H. Pennybacker, whose name is signed to the writing above, bearing date on the 26th day of January, 1882, has this day acknowledged the same before me in my said county.

Given under my hand this 26th day of January, 1882.

F. F. McCULLOUGH,
Notary Public, Cabell Co., W. Va.

STATE OF WEST VIRGINIA:

In the clerk's office of the county court of Cabell county, in the State aforesaid.

This deed, from S. H. G. Pennybacker to John B. Laidley, bearing date the 26th day of January, 1882, was this day presented to me, the clerk of the county court aforesaid, and the same, together with the certificate of acknowledgement thereon endorsed, is admitted to record in my office aforesaid.

Given under my hand this 26th day of January, 1882, at 9 o'clock and 30 minutes p. m.

M. S. THORNBURG,
Clerk Cabell County Court.

STATE OF WEST VIRGINIA, } *ss:*
Cabell County, }

I, M. S. Thornburg, clerk of the county court of said county, do certify that the foregoing is a true copy of a deed from S. H. G. Pennybacker to John B. Laidley, recorded in Deed Book "I," new series, page 23, of the records of Cabell county, W. Va.

Teste: M. S. THORNBURG,
Clerk Cabell County Court.

10. A deed from John M. Pennybacker and the said Sarah H. G. Pennybacker to C. P. Huntington, dated the 25th day of February, 1870, and the certificate of acknowledgement and recordation thereon endorsed, in the words and figures following, to wit:

Know all men by these presents:

That we, John M. Pennybacker and Sarah H. G. Penny-
249 backer, of the county of Cabell and State of West Virginia, parties of the first part, and C. P. Huntington, of the city, county and State of New York, of the second part,

Witnesseth, that the parties of the first part, in consideration of eleven thousand dollars, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey to the said C. P. Huntington, his heirs and assigns forever, all that certain tract or parcel of land, situate, lying and being in the county of Cabell and State of West Virginia, on the Ohio river, about three miles below the mouth of the Guyandotte river, and bounded as follows, to wit: "Beginning at a stake, corner of lot No. 3 in the division of the lands of Isaac Frampton, on the Ohio river, S. 19¼° E. 377 poles to a stake, from which a small sycamore stands S. 1½ east two poles and three links, N. 70¾ east one pole and 24 links to a stake, from which the above sycamore bears N. 33° W. three poles and 7 links, and another bears 32½ E. 3 poles and 6 links, thence S. 13° E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40° E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two

beeches, N. 21 W. 8 poles to the S. E. corner of the Brown tract, thence N. 19 W. 398 poles to a stake on Ohio river, S. 73 W. 47 poles and 14 links to the place of beginning; containing 240 acres, more or less; subject, however, to a reservation of one acre of land at the corner of the field where the lane and the turnpike road intersect, and whereon a grocery storehouse stands. Beginning at a stake on the side of the turnpike road and the west side of Beuhring's lane on my line, thence with the turnpike two hundred and ten feet to a stake; thence S. 19 E. 210 feet to a stake; thence east and parallel with turnpike 210 feet to a stake in my line; thence with said line N. 19° W. 210 feet to the beginning. The title of which land is hereby retained and reserved to S. H. G. Pennybacker, as if this deed was never made. Also, the right to occupy the land for the present year, work the same and apply the crop for his own use; but to allow said Huntington to work on the same for any purpose in building and completing the Chesapeake and Ohio R. road and its appurtenances. And all the estate, title and interest of the said John M. Pennybacker and Sarah H. G. Pennybacker, either in law or equity of, in and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof, to have and to hold the same to the only proper use of the said C. P. Huntington, his heirs and assigns forever. And the said John M. Pennybacker and Sarah H. G. Pennybacker, for themselves and for their heirs, executors and administrators, do hereby covenant with the said C. P. Huntington, his heirs and assigns that they are the true and lawful owners of the said premises and have full power to convey the same; that the title so conveyed is clear, free and unencumbered; and further that they will generally warrant and defend the same against all claim or claims of all persons whomsoever.

250 In witness whereof, the said John M. Pennybacker and Sarah H. G. Pennybacker have hereunto set their hands and seals this 25th day of February, in the year of our Lord one thousand and eight hundred and seventy.

JOHN M. PENNYBACKER. [SEAL.]
S. H. PENNYBACKER. [SEAL.]

Signed, executed and acknowledged in presence of us.

——— ———.

——— ———.

[U. S. revenue stamp, eleven dollars ($11.00).]

GUYANDOTTE TOWNSHIP,
The State of West Virginia, County of Cabell, } *ss:*

Be it rem-bered that on the 25th day of February, in the year of our Lord one thousand eight hundred and seventy, before me personally came John M. Pennybacker, party and granter in the foregoing deed, and acknowledged the signing thereof to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my seal on the day and year aforesaid.

THO. J. HAYSLIP, *Recorder.* [SEAL.]

STATE OF WEST VIRGINIA, }
County of Cabell. }

Personally came before me, the undersigned, recorder of the county and State aforesaid, Sarah H. G. Pennybacker, wife of the above-mentioned John Pennybacker and party to the foregoing deed, and, being examined by me privily and apart from her husband and having the deed aforesaid fully explained to her, she, the said Sarah H. G. Pennybacker, acknowledged that she had willingly signed, sealed, and delivered the same and wished not to retract it.

Given under my hand and seal this 25th of February, 1870.

THO. J. HAYSLIP, *Recorder.* [SEAL.]

RECORDER'S OFFICE, }
Cabell County, West Virginia, } *ss:*

This deed, from J. M. Pennybacker and wife to C. P. Huntington, was this day presented to me, the recorder of the county and State aforesaid, together with the certificates of acknowledgement thereon endorsed. The same is admitted to record.

Given under my hand this 31st day of March, 1870.

THO. J. HAYSLIP, *Recorder,*
By THOS. J. F. HAYSLIP, *Dept.*

A true copy from the record.
Teste:

M. S. THORNBURG,
Clerk C. C. C.

251 The plaintiff accompanied the offering of this deed with the statement that he would ask the court to instruct the jury as to the legal effect of this deed before the case was submitted to the jury.

11. A deed from C. P. Huntington to the defendant, The Central Land Company of West Virginia, dated the 16th day of October, 1871, and the certificate of acknowledgement endorsed thereon, in the words and figures following, to wit:

This deed, made the sixteenth day of October, in the year one thousand, eight hundred and seventy-one, between Collis P. Huntington, of the city, county and State of New York, and Elizabeth S., his wife, parties of the first part, and the Central Land Company of West Virginia, a corporation created by and under the laws of the State of West Virginia, party of the second part,

Witnesseth, that in consideration of the sum of six hundred thousand dollars, the said parties of the first part do grant unto the said part- of the second part, all those certain tracts, pieces or parcels of land situate, lying and being in the county of Cabell and State of West Virginia.

First. All that certain piece or parcel of land bounded and de-

scribed as follows, to wit: Beginning at a stake on the bank of the Ohio river, 68 poles above Wm. H. Hagan's upper corner, thence S. 15½ W. 224 poles to a pile of stone on the railroad, thence with the railroad N. 77 E. 39 poles and 5 links to a stake, then leaving the R. road S. 7 E. 274 poles to a white oak, S. 3 E. 278 poles to a stake on the military line, and with it N. 89 E. to Mrs. Rickett's line, and with it N. 3 east to John Everett's land and with his line N. 3 east to the first run on the right-hand side of the Guyandotte river and with the meanders of said run to the Guyandotte river, thence down the west bank of said river, including its banks and shores to the Ohio river, thence down the Ohio river, including its banks, shores and water privileges, to the beginning; containing four hundred and thirty-four acres, more or less; being the same premises which were conveyed to said C. P. Huntington by James H. Buffington and Columbia L., his wife, by deed dated February 14, 1870, recorded in the recorder's office of said Cabell county, March 22d, 1870, in Deed Book B, page 408.

Second. All that certain piece or parcel of land lying and being on the Ohio river and bounded and described as follows to wit: Beginning at a stake on the bank of said river, upper corner to the land claimed by the heirs of John Laidley, dec'd, thence with the upper line of said Laidley's land to a line of a tract of land now owned by P. C. Buffington, thence with the north line of the same to a white oak and dogwood, corner to the Hagan tract, thence with the lower line of the same to a stake on the bank of said river, thence down said river and binding thereon to the beginning; containing two hundred and fifty-eight acres, be the same more or less, being the same premises which were conveyed to the said C. P. Huntington by John N. Buffington of said Cabell county, by deed dated the 23rd day of July, 1870, recorded in the recorder's office of said county of Cabell, July 27, 1870, in Deed Book B, folio 508.

252 Third. All that certain tract of land situate in said Cabell county, West Virginia, containing four — and fifty-six acres, more or less, and described generally as follows: Beginning at a stake on the Ohio river, corner, formerly, of John N. Buffington and John Laidley, now, or late, of C. P. Huntington and Albert Laidley, thence southerly and with the line late of said Huntington to the corner late of said Huntington, Laidley and P. C. Buffington; thence westerly with the southern line of said Laidley's tract to the line of the tract formerly owned by William H. Buffington; thence southerly and westerly with the boundary line of said tract to the line of the tract formerly owned by Wm. Paine; thence with the boundary line to the line of P. C. Buffington; thence northerly with the line of said Buffington to the Ohio river; thence easterly and with said river to the beginning; being the same premises which were conveyed to the said C. P. Huntington by Albert Laidley and Vesta, his wife, by deed dated October 20th, 1870, recorded in the recorder's office of said county of Cabell, on the 22nd day of October, 1870, in Deed Book C, folio 2, subject to the reservation and exceptions contained in said deed.

Fourth. All those certain tracts or parcels of land situate in said county which in a certain deed executed by Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated April 13th, 1870, recorded in the recorder's office of said county, April 16th, 1870, in Deed Book B, 445, *an* bounded and described as follows, to wit: One tract containing two hundred and nin-ty-nine acres, bounded and described as follows: Beginning at a stake, northeast corner of S. W. Johnston's land and running with the upper line thereof, S. 20¾° E. 308 p. to a stake, thence N. 80° W. 3 poles and 18 links to a stone; thence S. 75° W. 115 p. to a stone near a sycamore tree, southwest corner of S. W. Johnston's land; thence S. 21° E. 112 po. to a stake in Watson's line at a dogwood; thence with said Watson's line S. 68 W. 60 po. to the dogwood corner; thence S. 21° W. 36 po. to two white oaks, beeches and sugar tree, S. 10° W. 114 p. to three wht. oaks on a ridge, S. 65 E. 48 poles to two white oaks, N. 48° E. 46 poles to a white oak and locust stump, N. 49 E. 160 po. to a black oak and chestnut oak, S. 88 W. 110 p. to a stake from which a black walnut —, N. 21½ E. 2 p. and 7 links, and an apple tree S. 29½ W. 4 po., stands north 29 E. 186 p. to a chestnut oak on a hillside, N. 33 E. 61 po. to two double willows, N. 20 W. 186 po. to a stone, S. 70 W. 25 poles, 15 links to a stone, N. 20° W. 121 po. to a stake on the Ohio river, S. 70 W. 53 p. and 16 links to the beginning; it being the same which was conveyed to me on the 22d day of March, 1870, by deed of Jno. L. Johnston and Mary Jane, his wife, and Wm. L. Johnston and Susan, his wife, by deed recorded in Deed Book B, page 422, of Cabell county.

One tract containing one hundred and ten acres, situate in Cabell county and bounded on the southeast by F. D. Beuhring, on the east by E. M. Frampton, and on the north by the lands formerly of Wm. L. and J. L. Johnston and hereinbefore described, and parcel of a certain tract of 800 acres of the said Laidley, fully described in a deed of O. A. and E. McGinnis, recorded in Deed Book J,
253 page 441 of Cabell county, which is to be laid off by the party of the second part, or under his directions, by lines which shall not cross the Porterfield ridge, and the *meets*, bounds and abuttals so established shall be regarded as the *meets*, bounds and abuttals intended by this conveyance, but not including one and half acres sold to Sam'l Allen by said Laidley; and also his entire interest in a tract of land containing 240 acres, purchased of J. M. Pennybacker and wife by said Laidley, and conveyed by his directions to C. P. Huntington, the title to which said Laidley covenants to warrant and defend generally.

Fifth. All those three certain tracts or parcels of land situate in said county, which in a certain deed executed by the said Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated July 25th, 1870, recorded in the recorder's office of said county, July 25, 1870, in Deed Book "B," folio 505, are bounded and described as follows, to wit: One containing seven hundred acres, known as the Everett farm and bounded on the north by the Ohio river, on the west by the lands of C. P. Huntington, on the east by the lands of J. M.

Hanley, on the south by the lands of F. D. K. Beuhring and others, the said tract being fully described in a deed from F. B. Kline, special com'r, to Albert Laidley, recorded in Deed Book B, folio 499, Cabell county, W. Va.

One other tract containing two hundred and forty-two acres, known as the Ephraim Frampton farm, and described as follows: Bounded on the north by the Ohio river, on the east by the lands of C. P. Huntington, on the west by the lands of A. Laidley, and on the south by the lands of A. Laidley, and fully described in a deed of E. M. Frampton and wife to A. Laidley, recorded in Deed Book B, folio 500, Cabell county, W. Va.; excepting from the quantities in said deed a lot of one acre of land conveyed by A. Laidley to Nancy M. Frampton by deed describing the same and recorded in Deed Book B, folio 501, Cabell county.

And one tract containing two hundred and seven acres and known as the Dr. McCullough land and described as follows: Bounded on the north by the Ohio river, on the east by the lands of A. Laidley (and herein conveyed), on the west by the lands of C. P. Huntington, on the south by Laidley and Huntington; the same being fully described in a deed by T. B. Kline, special com'r, and P. H. McCullough and wife to A. Laidley, excepting two lots of fifty feet in width by one hundred feet in length, recorded in said deed. The said several tracts making in the aggregate eleven hundred and forty-nine acres, of which is excepted and reserved from this grant the lot of one acre above referred to; also, the two lots of five thousand feet each, above referred to; also, a lot of six acres conveyed by A. Laidley and wife to F. D. K. Beuhing by deed recorded in Deed Book B, folio 503, Cabell county, W. Va.

Sixth. All those two certain tracts or parcels of land situate in said county, which in a certain deed executed by said Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated October 20th, 1870, recorded in the recorder's office of said county, October
254 22, 1870, in Deed Book C, folio 1, and bounded and described as follows, to wit:

One tract beginning at a stake on the Ohio river, corner of C. P. Huntington and Albert Laidley, formerly of C. Everett and John M. Hanly; thence sourtherly and with the line of C. P. Huntington to the southwestern corner of the said J. M. Hanley tract; thence easterly, and northerly with the boundary lines of said tract to the Ohio river; thence westerly and with the Ohio river to the beginning; the said tract containing three hundred acres, more or less.

The other tract, also situate in said county, adjoining the above-described tract, being bounded and described as follows, to wit:

Commencing at a stake on the Ohio river in the line of P. C. Buffington and Albert Laidley, formerly William P. Holderby; thence S. 5½ E. 1,173 feet to the corner of the Marshall College lot; S. 47¾ W. 564 ft. to a stake; S. 50°, 10′ W. 875½ feet to the northwestern corner of said college lot, S. 50° 10′ W. 1,343½ — to a stake on the line, formerly, of J. H. Poage; thence with the line of said Poage S. 17¼, E. 1,355 ft. to a stake fifty feet south of the center line of the Chesapeake and Ohio r'road as at present

located; thence parallel with said center line of said road S. 77°, 15', W. 1,103 ft. to a stake on the line of the tract of land formerly owned by John M. Hanly; thence northerly with the line of said Hanly to the Ohio river; thence easterly with the river to the beginning containing two hundred and four acres, more or less, saving and reserving from that part of this tract formerly owned by Wm. P. Holderby, a lot containing four acres, and certain rights of way fully described in his deed to Albert Laidley, of record in Cabell county, as a reservation, and also from that part of the tract formerly owned by Jas. H. Poage, four acres, described in the reservation made in his deed to Albert Laidley, also of record in Cabell county.

Seventh. All that certain tract of land which in a certain deed executed by John M. Pennybacker and Sarah, his wife, to said C. P. Huntington, dated February 25th, 1870, recorded in the recorder's office of said county, March 31st, 1870, in Deed Book B, pages 427 and 428, is bounded and described as follows, to wit:

"All that certain tract or parcel of land situate, lying and being in the county of Cabell and State of West Virginia, on the Ohio river, about three miles below the mouth of the Guyandotte river, and bounded as follows, to wit: Beginning at a stake, corner of lot No. 3, in the division of the lands of Isaac Frampton, Jr., on the Ohio river, south 19¼ east 377 poles to a stake from which a small sycamore stands, S. 1½ east two poles and three links N. 70¾ east, one pole and 24 links to a stake from which the above sycamore bears N. 33° W. three poles and 7 links, and another bears 32½ E. 3 poles and 6 links; thence south 13° E. one hundred and twenty poles to two white oaks, S. 30° W. thirty-six po. to a white oak among some rocks on a point, S. 70° W. 50 poles to a black oak and white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54° E. 62 poles to two black oaks, N. 40° E. 150 poles to a chestnut oak near top of ridge, N. 5° W. 180 poles to a white oak and two beeeches; N. 21° W. 8 poles to the S. E. corner of the Brown tract; thence N. 19° W. 398 poles to a stake
255 on the Ohio river S. 73 W. 47 poles and 14 links to the beginning; containing 240 acres, be the same more or less; subject, however, to a reservation of one acre of land at the corner of the field where the lane and the turnpike intersect and whereon a grocery storehouse now stands. Beginning at a stake on the side of the turnpike road and *and* the west side of Beuhring's lane on my line; thence with the turnpike, two hundred and ten feet to a stake; thence S. 19 E. 210 feet to a stake; thence east and parallel with turnpike 210 ft. to a stake in my line; thence with said line N. 19 W. 210 feet to the beginning; the title of which land is hereby retained and reserved to said S. H. G. Pennybacker as if this deed was never made." Also, the right to occupy the land for the present year, work the same and apply the crops for his own use, but to allow said Huntington to work on the same for any purpose in building and completing the Chesapeake & Ohio R. road and its appurtenances; being the same 240 acres above referred to in the closing paragraph of the fourth description.

Eighth. All that certain tract of land situate in the county of *of* Cabell and State aforesaid, which, in a certain deed, executed by said Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated December 7, 1870, recorded in the recorder's office December 7th, 1870, in Deed Book C, folio 39, is bounded and described as follows, to wit:

All of that tract of land s'd Albert Laidley bought of Wm. P. Holderby and deeded on the 7th day of October, 1870, and recorded in Deed Book B, page 554, in Cabell county, West Virginia, which was not heretofore deeded by said Laidley to said Huntington, and described as follows: On the east by Wm. P. Holderby, on the south by the C. & O. railroad, as at present located, on west by lands of s'd Huntington, formerly Poage, on the north by said Huntington, formerly Wm. P. Holderby; containing forty acres, more or less.

Ninth. All that certain lot, piece or parcel of land which, in a certain deed executed by William P. Holderby to said C. P. Huntington, dated March 1st, 1871, recorded in said recorder's office, March 6, 1871, in Deed Book C, page 103, is bounded and described as follows, to wit:

"A lot of land situate near the Ohio river, in Cabell county, West Virginia, and containing four acres of land, and including the brick dwelling-house and other buildings of the said party of the first part; the same being the exact parcel that was reserved in a previous grant of about one hundred and twenty-four acres, made to Albert Laidley and described therein as a reservation of four acres, with all the privileges and appurtenances thereof."

Tenth. All that certain tract of land which, in a certain deed, executed by Elisha T. Mitchell and Elizabeth M., his wife, to said C. P. Huntington, dated April 21st, 1871, recorded in the recorder's office of said county on the 21st day of April, 1871, in Deed Book C, page 133, is bounded and described as follows, to wit: "All that certain piece or parcel of land situate in Cabell county, West Virginia, purchased by the party of the first part from Dr. P. H.
256 McCullough and deed for same executed by T. B. Kline, special commissioner, and bounded as follows: On the north by the Ohio river, on the east, south and west by lands of C. P. Huntington, containing four acres of land, be the same more or less."

Eleventh. All that certain tract of land which, in a certain deed executed by William P. Holderby to said C. P. Huntington, dated July 19, 1871, recorded in the recorder's office of said county, on the 20th day of July, 1871, in Deed Book C, page 173, is bounded and described as follows, to wit: A certain tract or parcel of land, situate, lying and being in the county of Cabell, State of West Virginia, containing twenty-eight and one-half ($28\frac{1}{2}$) acres, more or less, and bounded and described as follows: On the easterly side by the lands of Peter C. Buffington and the said C. P. Huntington, on the northerly side by the lands of the State normal school, on the westerly side by the lands of the said C. P. Huntington, and on the southerly side by the lands of the Chesapeake and

Ohio Railroad Company, with all and singular the privileges and appurtenances thereunto belonging, together with all rights of reversion, whether in public roads or otherwise, thereof, reserving, nevertheless, from this grant two parcels of land, one containing one and ninety-two one-hundredths (1.92) acres, described as follows in a deed to C. F. Parsons, and now of record in the county of Cabell, to wit: Beginning at a stone in the east line of the lane running from the college to the State road, and in the centre of Sixth avenue, in the city of Huntington; thence east with the centre of Sixth avenue to a stake in the centre of 17th street, and thence south with the centre of said street and with the east line of said lane so as to include one and ninety-two-hundredths (1.92) acres, by a parallel line with the centre of said Sixth avenue; the other, containing one acre, is situated in the southwest corner of the tract herein conveyed and is bounded and described as follows, to wit: Beginning at a point thirty feet northerly of the northerly line of the land of the Chesapeake and Ohio Railroad Company and in the easterly line of the lane running from the college to the State road, running thence N. 14° W. 210 feet to the southerly line of 7th avenue, in the city or town of Huntington; thence, along this line, N. 76° E. 207.43 feet to a stake twenty feet east of the westerly line of 17th street; thence parallel with the said line of 17th street S. 14° E. 210 feet to a stake thirty feet northerly of the northerly line of the land of the Chesapeake and Ohio Railroad Company; thence parallel with the line of said railroad company S. 76° W. 207.43 feet to the place of beginning; it being intended by this grant to convey to the said party of the second part the entire residue of the farm on which the said party of the first part formerly resided, with all the rights and privileges that have hitherto remained vested in the said Holderby, except the above reservations.

Twelfth. All that certain tract of land which, in a certain deed executed by E. S. Holderby and C. A. Holderby, his wife, to said C. P. Huntington, dated the first day of September, 1871, recorded in the recorder's office of said county on the 5th day of September, 1871, in Deed Book C, page 186, is bounded and described as
257 follows, to wit: Beginning at a stake, corner of James H. Poage, standing 50 feet from the center line of the Chesapeake and Ohio railroad; thence N. 76 E. and parallel with said road 1,928 feet to corner of Huntington's land; thence with his line S. 5° 45 E. 1,500 feet to corner of Huntington; thence S. 76 W. and parallel with the railroad 1,560½ feet to James H. Poage's line; thence with Poage's line N. 17° 35′ W. 1,490$\frac{6}{10}$ feet to the beginning; excepting and reserving, however, out of the above boundary 16 acres sold and conveyed to C. F. Parsons, and, also, three and ($\frac{21}{100}$) twenty-one-hundredths acres sold and conveyed to Joseph and Foster Stewarts and Wm. Pennybacker, leaving, after reserving as above, 40.37 acres, be the same more or less.

Thirteenth. All that certain tract of land which, in a certain deed executed by J. Harvey Poage and Sarah A., his wife, to said C. P. Huntington, dated the 11th day of October, 1871, recorded in the

recorder's office of said county on the 12th day of October, 1871, in Deed Book C, page 216, is bounded and described as follows, to wit: Beginning at a stake on the line of the Poage and Hanly farms, being the southwest corner of the land that the said Poage and wife conveyed to A. Laidley; thence N. 76 E., parallel with the Chesapeake and Ohio railroad, (1,111) eleven hundred and eleven feet to the northwest corner of land E. S. Holderby conveyed to Huntington; thence S. 18° 53′ E. (772.8) seven hundred and seventy-two and eight-tenths feet to a stake on the south line of Ninth avenue; thence with said south line of Ninth avenue S. 76 W. (1,108) eleven hundred and eight feet to what was formerly the Hanly line; thence with said Hanly line N. 19° 6′ W. (773.06) seven hundred and seventy-three and six-hundredths feet to the beginning; containing nin-teen and *and* sixty one-hundredths acres.

Also all those certain tracts, pieces or parcels of land situate, lying and being in the county of Kanawha and State of West Virginia.

First. All that certain tract of land lying and being in the township of Cabin Creek, in the county and State aforesaid, containing thirty-six and two-thirds acres and bounded as follows: Beginning where once stood two box elders on the bank of the Kanawha river, upper corner, to a survey of 400 acres, made for and patented to Andrew Donnelly and now claimed as the corner between the lands of the Kanawha & Ohio Coal Co., and the land herein granted, and running thence with the line between said lands, the original call of said survey being S. 30 E. 20 poles to a beech at the foot of the hill; thence with the next line of said survey, the call being S. 60 W. 50 poles to a beech and sugar tree; thence with the lines of same till they intersect the line of lands belonging to Henry L. Creary, and with his line to Cabin creek; thence down Cabin creek with its meanders and binding thereon to the Kanawha river; thence up said river with its meanders and binding thereon to the place of beginning; being the same premises which were conveyed to the said C. P. Huntington by John McConihay by deed dated March 31, 1870, recorded in the recorder's office of said Kanawha county April 1st, 1870, in Deed Book No. 26, page 274.

258 Second. All the following property, to wit: A tract of land lying on the south side of Kanawha river, adjoining the lands of William Bradford on the lower side, and the lands of John McConahay on the upper side, and known as the Burke & Lewis or "Burke place;" containing by survey 149 acres, 2 roods and 14 perches of bottom land and 68 acres of hillside; being the same land assigned to the devisees of Col. William Dickinson in the division of the bottom lands of the late firm of Dickinson & Shrewsberry, as will appear by the report of Commissioners John L. Cole, M. P. Wyatt and Joel Ruffner, of record in the recorder's office of Kanawha county, and also filed with the chancery suit of Dickinson *versus* Shrewsberry, in the circuit court of Kanawha county. The same lands were subsequently assigned and allotted to H. C. Dickinson and his wife in the division of the lands belonging to the

devisees of Col. William Dickinson, as will appear by a deed of record between said devisees, the metes and bounds of which lands are as follows: Beginning at an elm, one live and one dead sycamore, near the river's edge, immediately above the mouth of a drain, corner to said land and the land now owned by William Bradford, and running thence S. 5½ W. 39 poles to a stake on the upper bank of said drain; thence S. 45½ W., crossing the drain at 5 poles, 8½ links, and the fence at the road at 13 poles, in all 29 poles, to a stone on the hillside, with a young sycamore and 4 buckeyes as pointers; thence S. 48½ E., crossing Wilmot's branch at 186 poles, in all 208 poles, to a stone on a hillside, corner to Lewis & Burke tracts; thence S. 37½ E., crossing a drain at 168, in all 288 poles, to a stone marked "D. S.," also, a buckeye, ash and birch, a double poplar, a dogwood and ironwood, marked as pointers, corner to John McConahay's land; thence with his line N. 51° E., crossing N. E. side of road and stone pile at 55 poles, in all 112 poles, to a locust on the Kanawha River bank in a fence row; thence leaving the said McConahay's line and running down the river and binding thereon at low-water mark to the beginning corner.

Also, three lots, being parts of an island in Kanawha river, known as Witcher's Creek island, the said three lots being numbered 2, 6 and 7 in the partition of the real estate of Henry Hannan, dec'd, which contain together 2 acres, 1 rood and 19 perches, and were assigned by metes and bounds to the devisees of Col. William Dickinson in the before-mentioned partition of the bottom lands of Dickinson & Shrewsberry, and subsequently assigned to the grantors in this deed, in the partition of the lands of Col. William Dickinson, to which reference is hereby had for a fuller description thereof.

Also a tract of land near to and separated from the before-mentioned "Burke place" by a small tract of land known as McConahay's Hannan lot, which land so sold is known as Dickinson & Shrewsberry's "Hannan lot;" was sold by the heirs of Henry Hannan to Samuel Burke, and by him to Dickinson & Shrewsberry, and in the before-mentioned partition of the bottom lands of Dickinson & Shrewsberry, was assigned to the devisees, Joel Shrewsberry, and in the partition of the lands of Joel Shrewsberry subsequently among
259 his devisees, was allotted and assigned to Mrs. Caroline Quarrier.

The same land was, to wit, on the — day of ——, 186–, conveyed and transferred to Samuel A. Miller, as trustee for his wife, Helen Q. Miller, and has been by deed of this date conveyed and sold by said Miller, trustee, and the same Miller and wife to the said H. C. Dickson, all of which will appear by the said several deeds of record in Kanawha county; which said lands containing 24 acres of bottom and 15 acres of hill land, is more particularly described as follows: Beginning at a stone marked "D. S.," near the upper corner of a newly enclosed field, original corner in the division of the Hannan lands, and running N. 51° 20′, crossing Field's creek at 58 poles; passing an apple tree marked "I" an- "=," on the other side at 86 poles and 20 links, crossing the creek again at from 102 to 106 poles, in all 112 poles, to a hickory on top of the bank, original cor-

ner in the division between lots No. 6 and 7; thence down the river with its meanders and binding thereon at low-water mark to a stake at the end of a fence row, corner to said lot and John McConahay's Hannan lot; thence with the line between said lots and the fence, S. 51° 25′ W., crossing the county road at 68 poles, in all 118 poles, to a stone marked "$\frac{D.S.}{M}$" on the back line of the Preston survey; thence with same S. 37½ E. 59 poles to the beginning.

Also, another tract of land back of and adjoining the "Burke" or "Burke & Lewis place," containing by survey 377¾ acres, the same being the interest of the devisees of Col. William Dickinson and Joel Shrewsberry in a tract of mountain land containing 1,700 acres, lately owned by John McConihay, Grant's heirs, Herrick Dickinson and Shrewsberry, and the children of Mrs. Amelia Bradford, which said interest so owned by the devisees of Dickinson & Shrewsberry at this time is more particularly described and set out in the proceedings of a chancery suit lately pending in the circuit court of Kanawha county for the division and partition thereof, in the name of Dickinson and Shrewsberry *vs.* John McConahay and others, to which reference is hereby had for a full and minute description hereof; being the same premises which were conveyed to said C. P. Huntington by Henry C. Dickinson and Sally J., his wife, by deed dated June 23, 1870, recorded in the recorder's office of said Kanawha county, June 25, 1870, in Deed Book No. 27½, page 57, and subject to the reservations and covenants contained in said deed.

Third. All that certain tract of land, containing one hundrd and seventy-one acres, more or less, situate in said Kanawha county, known as the Cottage farm, and generally described as follows: Commencing at a sycamore tree on the bank of Coal river, corner to George Washington survey and to farm of J. F. Hansford; thence with said Hansford's line to a stake on the bank of the Kanawha river; thence down said river and binding thereon to stake, corner of J. S. Cunningham; thence with said Cunningham's line to stake in said line and corner to Jos. S. Simms; and thence with said Simms' line to stake in said line and corner to J. S. Cunningham; and thence with said Cunningham's line to Coal river, corner of said Cunningham; and thence up said river and binding on the
260 same to the place of beginning; being the same premises which were conveyed to the said C. P. Huntington by Mrs. Elizabeth H. Thompson by deed dated July 26th, 1870, recorded in the recorder's office of said Kanawaha county, August 17th, 1870, in Deed Book No. 27½, page 78.

Fourth. All that certain piece of land situate in St. Albans, in said county and State, bounded and described as follows, viz: Beginning at a stone on the upper side of the James river and Kanawha turnpike, leading from St. Albans to Charleston, it being a corner to Mrs. Helen M. Cunningham's land, thence with a line thereof (1) S. 0° 30′ W. 80 poles to a stone, another corner to the same; (2) thence S. 60° 45′ E. 84$\frac{2}{5}$ poles to a stone, corner to Joseph Y. Simms' and in line with C. P. Huntington's (formerly Mrs. Elizabeth H. Thompson's) land; (3) thence with a line of the

last named S. 8° 30′ E. 122½ poles to a cross and hole marked with a hatchet on a rock on the edge of Coal river; thence down the river and binding thereon at low water, the following courses and distances, viz: (4) N. 43 W. 28 poles; (5) N. 49° 30′ W. 18 poles; (6) N. 60° W. 27 poles; (7) N. 58° 30′ W. 130 poles, passing the upper end of lock No. 1 at 42 poles, passing the lower end of the same at 55 poles, to a stake near a sycamore tree: (8) N. 65° W. 20 poles; (9) N. 22° W. 23½ poles; (10) N. 5° 45′ W. 30 poles; (11) north, 24 poles; (12) N. 4° 30′ W. 50 poles to a stake, thence leaving Coal river and running back to the town lots of I. Lasley and others; (13) S. 87½° E. 27⅘ poles to a stake; (14) N. 1½° E. 11 poles to a stake; (15) S. 87½ E. 11 4/10 poles to a stake; (16) N. 1½° E. 9 poles with the garden fence of Mrs. Mary Hudson to the James river and Kanawha turnpike; (17) thence with said turnpike S. 87½° E. 9 1/10 poles to a stake; (18) thence north 152 3/5 poles to a stone on the south side of the Kanawha river at low-water mark; (19) thence up said river with its meanders and binding thereon the following courses and distances, viz: S. 57° E. 40 2/5 poles to a stake; (20) S. 61° E. 30 poles to a stake; (21) S. 67° E. 40 ploes; (22) S. 71¾ E. 19⅗ poles to a maple, corner to the land of C. P. Huntington (formerly Mrs. E. H. Thompson); (23) thence leaving the river and with a line thereof S. 0° 30′ W. 131 poles to a stake, corner to J. T. Simms' one-acre lot below the turnpike; (24) thence with a line of the same N. 89° 10′ W. 11 2/5 poles to another corner to same; (25) thence with another line of the same 0° 50′ W. 17⅕ poles, passing through Simms' barn about the center, and crossing the James river and Kanawha turnpike to the upper side thereof to a line of said J. T. Simms' 19-acre lot; (26) with a line of said lot, and with a line of Mrs. H. M. Cunningham's land N. 60° 45′ W. 47 7/25 poles to the beginning; containing 258⅜ acres of land, a plot whereof is annexed to a deed made by John S. Cunningham and Helen M., his wife, to said C. P. Huntington, dated May 9, 1871, recorded with the said plot in the recorder's office of said Kanawha county, May 16, 1871, in vol. 27½, page 125, &c.; being the same premises conveyed by said deed, and subject to the reservations therein contained, and noted on said plot.

And also all contracts or title bonds for the sales of lands
261 in the county of Cabell, West Virginia, which have been heretofore assigned to the said C. P. Huntington and the deeds of which have not yet been given.

[$600 revenue stamps, canceled.]
[United States internal-revenue $200.00 stamp.]
[United States internal-revenue $200.00 stamp.]
[United States internal-revenue $200.00 stamp.]

Together with all and singular the tenements, hereditaments and appurtenances to the said several tracts or parcels of land belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever, as well *as* in

law as in equity, of the said parties of the first part, of, in or to the above-described premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, its heirs, successors and assigns, forever. And the said C. P. Huntington doth hereby covenant with the said party of the second part that he will warrant specially the property hereby conveyed.

Witness the following signatures and seals:

C. P. HUNTINGTON. [SEAL.]
E. S. HUNTINGTON. [SEAL.]

Sealed and delivered in presence of—
JAS. H. STORRS.
CHARLES NETTLETON.

STATE OF NEW YORK,
City, County, and State of New York, } *To wit, ss:*

I, Charles Nettleton, a commissioner appointed by the governor of the State of West Virginia for the State of New York, do certify that Collis P. Huntington, whose name is signed to the foregoing instrument, bearing date on the sixteenth day of October, A. D. one thousand eight hundred and seventy-one, has acknowledged the same before me in my State aforesaid.

Given under my hand and official seal this 16th day of October, A. D. 1870.

[SEAL.]

CHARLES NETTLETON,
Commissioner for West Virginia in New York, 117 *Broadway, New York City.*

STATE OF NEW YORK,
City and County of New York, } *To wit, ss:*

I, Charles Nettleton, a commissioner appointed by the governor of the State of West Virginia for the State of New York, do certify that Elizabeth S. Huntington, the wife of Collis P. Huntington, whose name is signed to the foregoing instrument, bearing date on the sixteenth day of October, A. D. one thousand eight hun-
262 dred and seventy-one, personally appeared before me in the county and State aforesaid, and, being examined by me privately and apart from her husband and having the instrument aforesaid fully explained to her, she acknowledged the said instrument to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand and official seal this 16th day of October, A. D. 1871.

{ Seal Charles Nettleton, Commissioner for West Virginia in New York. }

CHARLES NETTLETON,
Commissioner for West Virginia in New York,
117 *Broadway, New York City.*

RECORDER'S OFFICE, CABELL COUNTY,
WEST VIRGINIA, *December 6th*, 1871.

This deed from Collis P. Huntington and wife to the Central Land Company of West Virginia, with United States revenue stamps thereon for six hundred ($600) dollars, was this day presented in this office, and, together with the certificates thereon endorsed, admitted to record.

Teste: T. J. HAYSLIP, *Recorder*,
By THOS. J. F. HAYSLIP, *Dept.*

12. The depositions of Hammond Dorsey, Harriet O. Meyerly, and Henry E. Wooten, taken at the office of the Eutaw house, in the city of Baltimore, Maryland, in pursuance of notice, in the words and figures following, to wit:

HAMMOND DORSEY, a witness of lawful age, being by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows in answer to the following questions inclosed to me by mail by the pl't'ff and by me propounded to the witness:

1st question. Please state your name, age, and residence, and whether you are related to the parties to the suits in the caption or have any interest therein.

Answer. My name is Hammond Dorsey; I am forty-two years of age; I reside in Howard county, Maryland; I am not related to the parties to these suits nor have I any interest therein.

2nd question. Are you acquainted with Sallie H. G. Pennybacker? If so, please state when and where you knew her and whether you are related to her.

Answer. I am acquainted with Sallie H. G. Pennybacker. I knew her in Howard county, Maryland, from my childhood. She lived with her father in Howard county until she was married, and of course I often saw her and knew her very well. I am not related to her. Henry H. Owings, father of Sallie H. G. Pennybacker, married my father's sister, who was his second wife. Mrs. Pennybacker was a daughter of his first marriage.

3rd question. What was her maiden name?

263 Answer. Sallie H. G. Owings.

4th question. Were you acquainted with John M. Pennybacker? If so, please state when and where you knew him.

Answer. I did know John M. Pennybacker. I met him in Howard county in June, 1860, and had an acquaintance with him for two or three days.

5th question. Please state, if you know, whether or not Sallie H. G. Owings and John M. Pennybacker were married to each other; and, if so, where, when, and all you know about it.

Answer. I do know that Sallie H. G. Owings and John M. Pennybacker were married to each other. They were married at the house of my uncle, Henry H. Owings, the father of Mrs. Pennybacker, in Howard county, Maryland, on the 28th day of June, 1860. I was the groomsman of Mr. Pennybacker. I came to Baltimore

with them and saw them take the train for their proposed home in West Virginia, which was at that time Virginia.

6th question. Did they live together as man and wife? If so, where did they reside from the year 1865 to 1881?

Answer. They did live together as man and wife, to the best of my knowledge—at least, I always so understood so from their correspondence with the family. I don't think I ever saw Mr. Pennybacker after his marriage. He died a few years ago. I don't remember of meeting Mrs. Pennybacker since her marriage. I was absent from home during the war, when, I understood, she visited her father. Never heard anything to the contrary of their living together as man and wife. I always understood they lived in West Virginia.

7th question. By whom were they married, where did he reside, and when was he licensed to preach the gospel and celebrate the rites of marriage, if he were so licensed?

Answer. They were married by the Reverend Hezekiah Linthicum; he resided in Howard Co., Maryland, near Clarksville, and was an ordained minister of the Methodist Episcopal church. He preached at Linthicum chapel, in Howard county, which was named for him. I knew him as a minister of the gospel ever since I can recollect, up to the time of his death.

And further deponent saith not.

HAMMOND DORSEY.

HARRIET O. MEYERLY, another witness of lawful age, being by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows in answer to questions enclosed to me by mail and by me propounded to the witness:

1st question. Please state your name, age, and residence, and whether you are related to the parties to the suits named in the caption or have any interest therein.

Answer. My name is Harriet O. Meyerly; I am fifty years of age and reside in Howard county, Maryland; I am not related
264 to any of the parties to the suits named in the caption and have no interest therein.

2nd question. Are you acquainted with Sallie H. G. Pennybecker? If so, please state when and where you knew her and whether you are related to her.

Answer. I am acquainted with Sallie H. G. Pennybecker. We were raised together from infancy and lived together at our father's (Henry H. Owings') home, in Howard county, Maryland, until she was married to Mr. John M. Pennybecker. She was my sister.

3rd question. What was her maiden name?

Answer. Her maiden name was Sallie H. G. Owings.

4th question. Were you acquainted with John M. Pennybecker? If so, please state when and where you knew him.

Answer. I was acquainted with John M. Pennybecker. I met him for the first time at Belleville, Virginia, now West Virginia,

about the month of March, 1860; then again at my father's home, in Howard county, Maryland, in the month of June, 1860, when he married my sister, Sallie H. G. Owings.

5th question. Please state, if you know, whether or not Sallie H. G. Owings and John M. Pennybecker were married to each other; and, if so, when, and all you know about it.

Answer. I do know that Sallie H. G. Owings and John M. Pennybecker were married to each other; they were married at our father's (Henry H. Owings') residence, in Howard county, Maryland, on the twenty-eighth day of June, 1860. I was bridesmaid for my sister. After they were married they went to Baltimore and from there to their proposed home in Virginia, now West Virginia.

6th question. Did they live together as man and wife? If so, where did they reside from the year 1865 to 1881?

Answer. They did live together as man and wife. They always lived in West Virginia; they lived sometimes in Huntington, West Virginia, and sometimes in the country near Huntington. Their post-office address was always Huntington, West Virginia. I frequently received letters from my sister, Sallie H. G. Pennybecker, during these dates, and wrote to her frequently at this place, and she visited me two or three times during these dates and told me they were living there.

7th question. By whom were they married, where did he reside, and when was he licensed to preach the gospel and celebrate the rites of marriage, *and* if he were so licensed?

Answer. They were married by Hezekiah Linthicum, who resided in Howard county, Maryland. He was a regular, ordained minister of the Methodist Episcopal church. He preached at the Linthicum chapel, near Clarksville, Howard county, Maryland. He married quite a number of persons that I knew. I knew him as a minister of the gospel from my early childhood up to the time of his death, and know that he was a regular, licensed minister of the Methodist Episcopal church and could celebrate rites of marriage.

And further deponent saith not.

HARRIET O. MYERLY.

265 HENRY E. WOOTTEN, another witness of lawful age, being by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows in answer to the following questions, enclosed to me by mail by the plaintiff and by me propounded to the witness:

1st question. Please state your name, age, residence, and occupation.

Answer. My name is Henry E. Wootten; I am forty-five years of age; I reside in Ellicott City, in Howard county, Maryland; I am an attorney-at-law, and have practiced my profession for over twenty years.

2nd question. Are you related to the parties or have you any interest in the event of the suits named in the caption?

Answer. I am not related to the parties to these suits. I have no

interest in the events of the suits named in the caption. I do not know the parties personally, and never before heard of the suits.

3rd question. Are you acquainted and familiar with the laws of the State of Maryland? If so, please state what classes of persons, in the year 1860, in the month of June, had authority at that time, under said laws, to celebrate the rites of matrimony.

Answer. I am acquainted and familiar with the laws of the State of Maryland. In June, 1860, and for many years previously, the rites of matrimony within the State of Maryland could only be celebrated by some minister of the gospel ordained according to the rites and ceremonies of his or her church, or in such manner as is used and practiced by the society of people called Quakers. Unless so celebrated, the marriage, under the laws of the State of Maryland, is not recognized as valid. The laws of Maryland embracing the law upon this question are set forth in the 60th article of the first volume Public General Laws of Maryland and in the Maryland Revised Code, article 51, section 4, and was fully considered and construed in the case of Denison *vs.* Denison, 35th Maryland Reports, 361. The laws so codified have been in force in Maryland since the act of 1777.

4th question. Did said laws at that time requir*ing* the person celebrating the rites of marriage to make return thereof to any office in the State? And did such laws at that time require any such certificate or return to be recorded in any public office of the State?

Answer. The laws of Maryland in June, 1860, did not require a person celebrating the rites of marriage to make return thereof to any office in the State and did not require any certificate or return to be recorded in any public office in the State. The act of 1865, chapter 130, provides for a record of births, marriages, and deaths in the different counties and in the city of Baltimore. It requires a person solemnizing or performing the marriage ceremony to give notice thereof to the clerk, and if he neglects so to do for the period of six months shall forfeit a sum not exceeding the sum of
266 five dollars. The records of the clerk are *prima facie* evidence of the facts recorded; but, as I have stated, this was not the law previous to the year 1865.

And further this deponent saith not.

HENRY E. WOOTTEN.

STATE OF MARYLAND, *City of Baltimore*, } *ss:*

I, Murray Hanson, a notary public of the State of Maryland, duly commissioned and qualified, residing in the city of Baltimore and State aforesaid, do certify that the foregoing depositions of Hammond Dorsey, Harriet O. Meyerly, and Henry C. Wootten, were taken, sworn to, and subscribed before me at the time and place and for the purposes stated in the caption.

Given under my hand and notarial seal this second day of June, A. D. 1884.

[SEAL.]

MURRAY HANSON,
Notary Public.

13. A copy of the record of the circuit court of Howard county, Maryland, and the certificate thereto attached, in the words and figures following, to wit:

"1860, June 27.—John M. Pennybecker, Sarah H. G. Owings Linthicum. $4.50."

STATE OF MARYLAND, *Howard County,* } *To wit:*

I, L. J. Watkins, clerk of the circuit court of said county, do certify that the foregoing is a true transcript from the records kept in the clerk's office of the said court of the entry therein relating to the license issued from said office on the 27th day of June, in the year 1860, for the marriage of John M. Pennybecker to Sarah H. G. Owings.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the clerk's office thereof, on the 20th day of June, A. D. 1884.

[SEAL.] L. J. WATKINS, *Clerk.*

STATE OF MARYLAND, *Howard County,* } *sct:*

I, I. Thomas Jones, judge of the circuit court for Howard county, State of Maryland, do certify that L. J. Watkins, whose name is subscribed to the foregoing certificate and attestation relating to the license issued to Jno. M. Pennybecker and Sarah H. G. Owings on the 27th day of June, 1860, to be joined in holy matrimony, was, at the time of the signing of the said certificate bearing date the 20th day of June, A. D. 1884, the clerk of the circuit court for Howard county, in the State of Maryland, and that the name thereto subscribed is the handwriting and genuine signature of said
267 clerk, L. J. Watkins, and that full faith and credit ought to be given to his official acts, and that said certificate is in due form, in accordance with the laws of said State.

I. THOMAS JONES.

23 June, 1884.

STATE OF MARYLAND, *Howard County,* } *sct:*

I, L. J. Watkins, clerk of the circuit court for Howard county, State of Maryland, do certify that I. Thomas Jones, whose name is signed to the foregoing certificate, bearing date the 23 day of June, A. D. 1884, is and was at the time of the signing the same judge of the circuit court for said county of Howard, State of Maryland, and that the name thereto subscribed is his handwriting and his genuine signature.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the clerk's office thereof, on the 24th day of June, A. D. 1884.

[SEAL.] L. J. WATKINS, *Clerk.*

14. The report of the surveyor, James L. Thornburg, and the plat accompanying the same made to this court, in this case, in the words and figures following, to wit:

(The said report has been heretofore copied herein.)

15. The decree of the circuit superior court of law and chancery of Augusta county, Virginia, in the cause of Coleman and others against Simon Morgan and others and referred to in the said deed from Albert Laidley to Isaac Frampton, together with the bill and exhibits therein, in the words and figures following, to wit:

VIRGINIA:

At a superior court of chancery holden at Staunton, December the eighth, in the year of our Lord one thousand eight hundred and eighteen, between William Coleman, Morris Morris, and William Johnston, plaintiff-, and Simon Morgan, Thomas Buffington, Benjamin Brown, Charles Smith, Edmund Morris, Henry Hampton, Leut. Nathaniel Scales, George Ward, Edmund McGinnis, Peter Scales, Moses McCormaick, James McCormick, Edward McCarty, John Poage, Mark Russell, Henry Brown, Jonathan Buffington, Jeremiah Ward, Martin Hull, John Merritt, Noah Scales, Noah Bostick, William Merritt, Jeffrey Russell, John Rogers, Richard Crump, John Russell, Charles Brown, William Holderby, Joshua Howell, Stephen Kelly, James Haskins, Daniel Leet, Thomas Moss, David Wilson, Joseph Malcomb, heirs of George Malcomb; James Hagan, the rep's of Charles Smith, dec'd; Martin Hollenback, David Spurlock, Hugh Pane, William Buffington, Joel Buffington, Alexander and Horatio Catlett, Achilles and Milfred Rogers, Edward McCarty, Daniel Morgan, John Morrow, acting ex'c'r of Robert Rutherford, dec'd; John Morrow, in his own right; Elizabeth Winineo, John Savage, heirs of John Savage, dec'd; Wm. Bailey's heirs and rep's, John Ram-
268 sey's heirs and representatives, Joseph Howard, Hannah, his wife; heirs of John Wilson, dec'd; the heirs and rep's of William Coleman, dec'd; the heirs and rep's of Magnus Tate, dec'd; Samuel Beider, Margaret Latrage, William Hampton, John Chadwick, Parmara Warden, Jacob and William Hite, Randolph Heizer, Alexander Porter, the rep's of Edward Waggoner, the rep's of Wm. Johnston, the heirs and rep's of Hugh McCoy, the heirs and rep's of Richard Smith, the heirs and rep's of Angus M'Donald, the heirs and rep's of *of* Nathan Chapman, the heirs and rep's of James Samuels, of Michael Scully, of Edward Goodwin, of Joseph Gatewood, of Henry Bailey, of William Coffland, of Mathew Doran, of Mathew Cox, of Marshall Pratt, of John Wilson, of Nathaniel Barrett, of David Gorman, of Patrick Gollaway, of Timothy Conway, of Christian Baumgardner, of John Houston, of John Maid, of James Ford, of William Braughton, of William Carnes, of Mathew Jones, of Phillip Gatewood, of Daniel Staples, of William Lowry, of James Ludlow, of James Latort, of James Given, of Joshua Jordon, of William Jinkins, of James Cornnal, of John Ghatston, of Robert Jones, of W. Hogan, of John Franklin, of John Bishop, of Richard Bottan,

of John Kincaid, of George Hunt, of Robert Langdon, of Robert Turnstale, of John Smith, of Charles, James and Edward Evans, of Richard Morris, and of Mathew Jones, defendants.

This cause came on to be heard this eighth day of December, 1818, upon the bill, answers, exhibits, depositions, and reports of commissioners and was argued by counsel. Whereupon it is adjudged, ordered, and decreed that the titles in and to 3,428 acres of land in defendant's, Thomas Buffington's, answer mentioned allotted to William Buffington by the division of 1775 and as the same was laid of- by the commissioners appointed by this court be confirmed to the said Thomas Buffington and William Buffington for the use and purposes expressed in the last will of William Buffington, their father, a copy of which is filed among the papers in this cause, and that they and those severally holding under said will, who are now in possession, be forever quieted therein so far as their general rights extend; and it is further adjudged, ordered, and decreed that the devisees and legal representatives of Charles Morgan be confirmed in the title to the 800 acres of land allotted by the said division of 1775 to the said Charles as the portion of Christopher Baungardner and John Holston, two of the original patentees, as designated in the said commissioner's report and survey—that is to say, to Simon Morgan, two hundred acres, part thereof; to Nancy Morgan, two hundred acres, part thereof; to James Wills and Sally, his wife, in right of said Sally, two hundred acres, part thereof, and two hundred acres to the heirs and legal representatives of the said Charles Morgan, mentioned in the answer of Daniel Morgan, and that they — put in possession thereof and forever quieted therein; and it is further adjudged, ordered, and decreed that the title to the 1,200 acres of land allotted by the said division of 1775 to James M'Cormick in satisfaction of the portions of Timothy Conway, John Meade,
269 and James Ford, who were the original patentees claimed by the said James M'Cormick and as stated in the commissioners' report and survey, be confirmed to Moses M'Cormick and the other devisees of the said James M'Cormick or those holding under them, according to the will of the testator, a copy of which is filed among the papers in the cause, and that they be severally quieted in the possession thereof; and it is further adjudged, ordered, and decreed that the title to the lots Nos. 48, 58, 59, and 60 as laid down in the said commissioners' report and survey accompanying the same, being allotted by the division in 1775 to Isaac Larne for the claims of Nathaniel Barrett, James Cammack, Patrick Galloway, and Hugh McCoy, patentees in the original grant, be confirmed to Edmund McGinnis, with all the rights appertaining thereto, and that possession thereof be delivered to him and him forever quieted therein; and it is further adjudged, ordered, and decreed that the title to the two fractions of lot No. 49 to lots 51, 52, 53, 54, and 55, as laid down by the said commissioners in their report and survey, being the allotments made of the shares of *of* Robert Turnstall, Robert Langdon, Joshua Jordon, Edward Evans, John Ramsey, Michael Scully, and Marshal Pratt, be confirmed to John Morrow, who has shown himself entitled thereto by regular titles, and that he and

those claiming under him be forever quieted therein; and as respects lots No. 56 and 57, being the allotments made for the share of James Given and William Hogan, though the court is not satisfied that the titles thereto have been transmitted to Robert Rutherford, under whom the said Morrow claims, by the original patentees or their legal representatives, yet, as the said Morrow is in possession under the division made in 1775, the court is of opinion that he ought to remain undisterbed until good adverse titles shall be exhibited by other claimants, which has not yet been done. It is therefore adjudged, ordered, and decreed that the said Morrow and those claiming under him be quieted in the possession of lots No. 56 and 57 until such superior claim shall be sanctioned by this court; and it is further adjudged, ordered, and decreed that the titles to lots No. 10 and 11 as laid down in the commissioners' reports and survey, being the allotments made *made* for the shares of Mathew Doran and Richard Botton, two of the original patentees, be confirmed to the said John Morrow as executor of the last will and testament of Robert Rutherford for the use and purposes mentioned in the said will, and that the said Morrow be forever quieted therein; but this decree is not intended to preclude any person claiming under Rebecca, one of the daughters of the said Mathew Doran (or if the said Rebecca should be alive), from setting up and exhibiting the claims to which the said Rebecca was entitled.

And it is further adjudged, ordered, and decreed that the title to lot No. 26 as laid down in the said commissioners' report and survey be confirmed to David Spurlock, and that he be forever quieted in the possession thereof.

And it appearing to the satisfaction of the court that the defendant Charles Brown is entitled to lot No. 22, assigned by the
270 said commissioners as the share of William Bailey, and to lot No. 25, composed of two fractions, assigned by the said commissioners as the share of Henry Bailey, it is adjudged, ordered, and decreed that the right of the said Brown to the said lot- No. 22 and 25 be confirmed, and that the same be delivered to him, and that he be quieted in the possession thereof.

And it further appearing to the satisfaction of the court that the defendant Horatio Catlett by virtue of a conveyance from Phillip Eastin, now deceased, and Sarah, his wife, the latter of whom is one of the devisees of Charles Smith, dec'd, is entitled to one-fourth of lot No. 27, which in the division of 1775 was assigned to the said Charles Smith, it is adjudged, ordered, and decreed that the aforesaid right of Horatio Catlett be confirmed to him, and that he be quieted in the possession thereof; and the court would at this time direct the said share of said Horatio Catlett to be laid off for him by proper partition, including the improvements made by him, if all the representatives of said Charles Smith were now before the court, but if now the said representatives except said Sarah Eastin being now before the court this cause is continued as to said lot No. 27 for further proceedings.

And it appearing to the satisfaction of the court that the defendant John Poage is entitled to lot No. 15, assigned by the commis-

sioners aforesaid as the share of James Ludlow, *out* to lot No. 18, assigned by said commissioners as the share of James Latrat, it is *is* therefore adjudged, ordered, and decreed that the said right of said Poage to the said lots No. 15 and 18 be confirmed, and that the same be delivered to him, and that he be quieted in the possession thereof.

And it further appearing to the satisfaction of the court that the defendant- Achilles Rogers and Mildred Rogers, by virtue of a conveyance from William Coleman, one of the original patentees, are entitled to lot No. 31, composed of two fractions assigned by the said commissioners as the share of the said Coleman, it is adjudged, ordered, and decreed that the rights of the said Achilles Rogers and Mildred Rogers to the said lot No. 31 be confirmed; that the same be delivered to them, and that they be quieted in the possession thereof.

And it is further adjudged, ordered, and decreed that the title to lots No. 37, 38, and No. 7 as laid down by the said commissioners in their report and survey, being the allotment made for James Samuels, Hugh Paul, and Robert Jones, three of the original patentees, be confirmed unto Henry Hampton and those holding under him as follows: To Henry Brown, 200 acres; to Nathaniel Scales, 300 acres, and Mark Russell, 200 acres, according to their several deeds filed among the papers in this suit, and that they be severally quieted in the possession thereof.

And it further appearing to the court from the evidence before it that the defendant Manoah Bostick is entitled to lot No. 47, assigned by the said commissioners as the share of David Gorman, one of the original patentees, it is therefore adjudged, ordered, and decreed that the right of said Manoah Bostick to the said lot
271 No. 47 be confirmed; that the same be delivered to him, and that he be quieted in the possession thereof.

And it further appearing to the satisfaction of the court that the defendant Edward McCarty is entitled to lot No. 5, composed of two fractions assigned by said commissioners to Richard Trotter, one of the original patentees, the court doth therefore adjudge, order, and decree that the possession of said lot No 5, composed of two fractions, be rendered to the said Edward McCarty; that the fee-simple interest be vested in him, and that he be quieted in the possession thereof; and it further appearing to the court by the evidence exhibited by the said Edward McCarty that he redeemed all the land embraced in the said grant of 28,527 acres which lays in the State of Virginia by paying the direct taxes for which the said land was sold, together with the expence and charges attending said sale, amounts to $207.03, to the United States officer on the 14th day of November, 1803, at the rate of two cents per acre, except so much as lays within the lots No. 32, 33, 34, 38, 49, 50, 51, 52, 53, 54, 55, 56, 57, 7, 37, 43, 44, 45, 47, 48, 58, 59, 60, 36, 17, 14, 28, 29, 40, 23, and 5 as laid down by the said commissioners in the report aforesaid—the owner paid the United States the amount of the direct tax due thereon—it therefore appears to the court reasonable that the said Edward McCarty should have a lienn on

said land by which he should be reimbursed the money thus expended. In consideration thereof, the court doth further adjudge, order, and decree that the owners of all the lots lying within said grant, as reported by said commissioners, and within the limits of the State of Virginia, except the owners of the lots above specifically enumerated, pay to the said Edward M'Carty at the rate of two cents for every acre included within such lot as ascertained by the report of said commissioners, with interest thereon, at the rate of six per cent., from the 14th of November, 1803, until paid, on or before the first day of July, 1819, and in default thereof, then in that event the marshal of the chancery district within which the said land lays shall proceed to sell so much of each lot as will be sufficient to pay the amount due thereon and the cost of sale, having previously advertised the time and place of sale for at least eight weeks in the National Intelligencer, printed in the city of Washington, and the Enquirer, printed in the city of Richmond, and execute a deed with special warranty to the purchaser *as* purchasers thereof and pay the money arrising from said sale, after deducting the costs of sale, to the — Edward M'Carty, and then make report to this court how he has executed this decree.

It is, however, understood that this court reserves the right hereafter to make such further decree relative to the payment of such costs and charges, contributions and compensations for improvements to equalize the several allotments, as may appear equitable.

I, William S. Eskridge, clerk of the Staunton chancery court, do hereby certify that the foregoing is a true copy of the report
273 filed and the decree made in the case therein referred to. Certified this 10th day of March, 1820.

WILLIAM S. ESKRIDGE.

(Here follows diagram marked p. 272.)

Commencing at a white oak on the bank of the Ohio river near the lower corner of Mr. Brown's improvement, at A, from which *ash* a sycamore, 24 ins., stands S. 22° W. 33 links, and an elm, 22 in., *did* stands N. 72° E. 13 chs. 68 links, N. 73° E. 104 chs. to a stake on the side of a ridge, on the back line, south of Four-pole creek, at C, from which stake a gum, 12 ins., stands N. 6° W. 29 links and another gum, 12 ins., stands N. 54 E. 29 links; thence N. 81° W. 32 chs. 50 links to a stake on the back line at D, from which stake a beech 18 in. diam'r stands S. 53 W. 19 links; thence N. 18° W. 88 chains to the place of beginning, containing four hundred acres and all bottom.

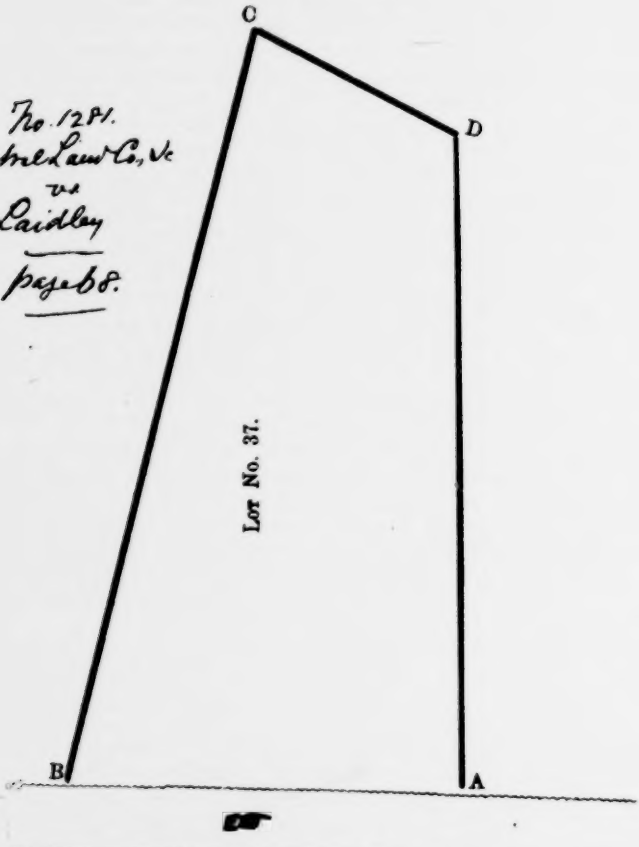
The plaintiff here tendered and offered to read in evidence a deed from David Frampton to John L. Johnson, and proved by witness, John L. Johnson, the due execution thereof by the said David Frampton to the said John L. Johnson, which deed is in words and figures following, to wit:

This indenture, made and entered into this 23d day of June, one thousand, eight hundred and sixty-three, between David Frampton

Extract from Report of Commissioners.

Lot No. 37. James Samuels.

Assigned to Henry Hampton in 1775.



No. 1281.
Central Land Co, &c
vs
Laidley
page 68.

This lot is situated on the Ohio River and includes Major Scales' and Mr. Brown's improvements.

No. 103
Huntington
vs
Laidley &c.
p. 272

and Clara, his wife, of the first part, and Wm. L. Johnson and John L. Johnson, of the second part,

Witnesseth, that the said Frampton and wife, for and — consideration of the sum of five thousand dollars, to the parties of the first part in hand paid, hath given, granted, bargained and sold, and by these presents do give, grant, bargain and sell, unto the said *unto the said* Wm. L. Johnson and John L. Johnson a certain tract of land, situate in Cabell county, which they inherited of Isaac Frampton, dec'd, and they seized by virtue of a partition deed, and bounded as follows, to wit: Beginning at a stake N. E. corner of Samuel W. Johnston's land and running with his upper line S. 20¾ E. 308 poles to a stake, N. 80 W. 3 poles and 18 links to a stone in the ground, S. 75 W. 113 poles to a stone in the ground near a sycamore tree, corner of James and Samuel W. Johnston's; S. 21 E. 112 poles to a stake on Watson's line, and with the same S. 68 W. 60 poles to the dogwood corner, S. 21 W. 36 poles to two white oaks, 2 beeches and a sugar tree; S. 10 W. 114 poles to three white oaks on a ridge, S. 65 E. 48 poles to 2 white oaks at Laidley's gate, on the hill, N. 84 E. 116 poles to a white oak and locust stump, N. 49 E. 160 poles to a black oak and chestnut oak *and chestnut oak*, S. 88 W. 110 poles to a stake from which a black walnut stands N. 21½ E. 2 poles and 17 links, and an apple tree is S. 29½ W. 4 poles; thence N. 29 E. 186 poles to a chestnut oak on a hill side, N. 33 E. 61 — to 2 double willows, N. 20 W. 232 poles to a stake on the Ohio river, S. 73 W. 53 poles and 16 links to the beginning; containing 303 acres; to have and to hold the above-granted piece or parcel of land
274 unto the s'd Wm. L. Johnston and John L. Johnston, of the second part, to their own proper use and behoof. And the said parties of the first part covenants, agrees, warrand and forever defends the right and title generally unto the said Wm. L. Johnston and John L. Johnston, as witness their hands and seals, this day and year first above written.

DAVID FRAMPTON. [SEAL.]
CLARA A. FRAMPTON. [SEAL.]

STATE OF VIRGINIA, *Cabell County,* } *ss:*

I, T. J. Merritt, deputy clerk for J. S. Witcher, clerk for the county aforesaid, do certify that David Frampton, whose name is signed to the foregoing deed, bearing date the 23rd day of June, 1863, has acknowledged the same before me in my said county.

Given under my hand this 23d day of June, 1863.

T. J. MERRITT, *Dept. Clk,*
For J. S. WITCHER.

STATE OF VIRGINIA, *County of Cabell,* } *ss:*

I, T. J. Merritt, deputy clerk for J. S. Witcher, clerk of the county aforesaid, do certify that Clara Frampton, wife of David Frampton, whose name is signed to the foregoing deed, bearing date the 23d day of June, 1863, personally appeared before me in the county

aforesaid, and, being examined by me privily and apart from her husband and having the writing aforesaid fully explained to her, she, the said Clara Frampton, acknowledged the said writing to be her act and deed; that she had willingly signed the same and does not wish to retract it.

Given under my hand this 23d day of June, 1863.

T. J. MERRITT, *Dept. Cl'k*,
For J. S. WITCHER.

CABELL COUNTY COURT CLERK'S OFFICE, *June* 23*d*, 1863.

The foregoing deed from David Frampton to Wm. L. Johnston and John L. Johnston was this day presented to me, the clerk of Cabell county court, with the certificate of acknowledgements thereon endorsed. The same is admitted to record.

Teste: J. S. WITCHER, *Cl'k*,
By T. J. MERRITT, *D. C.*

To the reading of which to the jury the defendant objected upon the ground of its irrelevancy, and the court sustained the objections of the defendant and refused to allow the said de-d to be read as evidence to the jury; to which opinion and ruling of the court the plaintiff excepts, and this his exception, numbered one, is saved to him.

And thereupon the plaintiff offered to read in evidence to the jury pages 240 to 244 of Deed Book N of the record of deeds in
275 the county court clerk's office of Cabell county, what purports to be three deeds of partition of the lands of Isaac Frampton, Jr., each bearing date the 18th day of April, 1863, one to Rebecca J. Everett to said lot No. 4, one to David Frampton to said lot No. 1, and one to Ephraim Frampton for said lot No. 3, which, with the certificates thereon indorsed, are in the words and figures following, to wit:

This indenture, — this 18th day of April, one thousand eight hundred and sixty-three, between Rebecca Everett, David Frampton and Clara, his wife, and Hiram Frampton and Clarrissa, his wife, parties of the first part, and Ephraim M. Frampton, of the second part:

Whereas, the circuit court of Cabell county, at the Nov. term, 1862, in a suit therein pending, wherein P. H. McCullough and E. M. Frampton were pl'ffs and Rebecca Everett and others were def'ts, did direct commissioners to divide a tract of 996 acres of land between the parties in said suits, and by a further decree at the March term, 1863, the court confirmed the report of the commissioners in that partition, and further ordered and decreed that the parties should perfect that partition by executing and acknowledging for record apt and proper deeds of conveyance, and o- their failing to do so within twenty days from the rising of this court, that John Laidley, a special commissioner, do prepare and in the name and on the behalf of said parties, execute and acknowledge for record a deed or deeds to those *intitled* to the several lots as designated by

the commissioners' and surveyor's reports. And whereas the said parties have failed to make the said conveyance. This indenture therefore

Witnesseth, that for and in consideration of the premises, the said parties of the first part doth give, grant, bargain, sell, release and confirm unto the said Ephraim M. Frampton, his heirs and assigns, forever, the following-described tract, being lot No. 3 in the division of a tract which the parties inherited of Isaac Frampton, Jr., on the Ohio river, in Cabell county, and bounded as follows: Beginning at a stake on the Ohio river, upper corner of lot No. 2, S. 19½, 22 poles to a stake, S. 73 W. 30 poles and 14 links to stake on the Stribling line, between 2 elms, S. 19½ E. 333 poles to a stone in the road on the military line, S. 7 W. 86 poles to a stake by the side of the road, S. 46 W. 61 poles to a chestnut oak and hickory, S. 48 poles to 2 double hickories, N. 86 W. 12 poles to a black oak and hickory, S. 5 W. 34 poles to a read oak on a point, S. 45 E. 14 poles to 2 chestnut oaks on a cliff of rocks, S. 32 W. 70 poles to a mulberry near an old ford, S. 30 E. 73 poles to 2 hickories on the top of a hill, N. 55 E. 48 poles to 2 white oaks on the same hill, N. 11½ E. 120 poles to a black oak and white oak on a point, N. 70 E. 50 poles to a white oak on a point among some rocks, N. 30 E. 36 poles to 2 white oaks, N. 13 W. 120 poles to a stake from which a small sycamore stands, S. 33 W. 3 poles, 27 links, and another S. 2½ E. 3 poles and 6 links, 1.70¾ W. 1 pole and 24 links to a stake from which a small sycamore stands, S. 1½ E. 2 poles and 3 links, N. 19¼ W. 377 poles to a stake on the river; thence S. 73 W. 15 poles and 14 links to
276 the beginning; containing 242 acres. To have and to hold the above-described tract of land unto the said Ephraim M. Frampton, his heirs and assigns, forever. And the said parties of the first part doth covenant and agree to warrant and defend the right and title to said tract of land unto the said E. M. Frampton, his heirs and assigns, forever.

In witness whereof, the said parties, by the said John Laidley, as commissioner as aforesaid, hath hereunto set their hands and seals the day and year first above written.

REBECCA EVERETT, [SEAL.]
By JOHN LAIDLEY, *Sp'l Com'r.*
DAVID FRAMPTON, [SEAL.]
By J. LAIDLEY, *Sp'l Com'r.*
CLARA FRAMPTON, [SEAL.]
By J. LAIDLEY, *Sp'l Com'r.*
HIRAM FRAMPTON, [SEAL.]
By J. LAIDLEY, *Sp'l Com'r.*
CLARISSA FRAMPTON, [SEAL.]
By J. LAIDLEY, *Sp'l Com'r.*

STATE OF WEST VIRGINIA, *Cabell County,* } *ss:*

I, John Laidley, dept. clerk for John S. Witcher, clerk of said county, do certify that John Laidley, whose name is signed to the

writing above, bearing date 18th of April, 1863, has acknowled- the same before me in my s'd county to be the act and deed of the principals, the grantors therein named.

Witness my hand this 18th day of April, 1863.

JNO. LAIDLEY, Jr, *Dpt. Cl'k.*

CABELL COUNTY COURT CLERK'S OFFICE, *May 30th*, 1863.

The foregoing deed from John Laidley, spec'l com'r, to Ephraim M. Frampton was this day presented to me, the clerk of Cabell county court, with the certificate of acknowledgement thereon endorsed. The same is admitted to record.

Teste: J. S. WITCHER, *Cl'k*,
By T. J. MERRITT, *D. C.*

This indenture, made and entered into this 18th day of April, one thousand, eight hundred and sixty-three, between Ephraim M. Frampton and Nancy, his wife, David Frampton and his wife, and Hiram Frampton and Clarissa, his wife, parties of the first part, and Rebecca Everett, of the second part:

Whereas, the circuit court of Cabell county, at the Nov. term, 1862, in a suit therein pending, wherein P. H. McCullough and E. M. Frampton were complainants and Rebecca Everett, David Frampton and Hiram Frampton were def'ts, did direct commissioners to divide a tract of 996 acres of land between the parties in said suit, and by a further decree in the same cause at March term, 1863, the court confirmed the report of said commissioners
277 in that partition, and further ordered and decreed that the parties should perfect that partition by executing and acknowledging for record apt and proper deeds of conveyance, and on their failing to do so within twenty days after the rising of the court, that John Laidley, a special commissioner, do prepare and in the name and on behalf of said parties execute and acknowledge for record a deed or deeds to those entitled to the several lots, as designated by the commissioners' and surveyor's reports. And whereas the said parties have failed to make such conveyance. This indenture therefore

Witnesseth, that for and in consideration of the premises, the said parties of the first part do*th* give, grant, bargain, sell, release and confirm unto the said Rebecca Everett, her heirs and assigns, forever, the following-described tract, being lot No. 4 in the division of a tract which the parties inherited from Isaac Frampton, Jr., on the Ohio river, in Cabell county, and bounded as follows: Begin-ing at a stake, corner of lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles and 3 links, N. 70¾ E. 1 pole and 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to 2 white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and white oak on a point, S. 11½ W. 120 poles to 2 white oaks on a hill, S. 54 E. 62 poles to 2 black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge,

N. 5 W. 180 poles to a white oak and 2 beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning; containing 240 acres. To have and to hold the above-described tract of land unto said Rebecca Everett, her heirs and assigns, forever. And the said parties of the first part do*th* covenant and agree to warrant and defend the right and title to said tract of land unto the said Rebecca Everett, her heirs and assigns forever.

In witness whereof, the said parties, by John Laidley, as commissioner as aforesaid, hath hereunto set their hands and seals, the day and year first above written.

EPHRAIM M. FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Spec'l Com'r.*
NANCY FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Spec'l Com'r.*
DAVID FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Spec'l Com'r.*
CLARA FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Spec'l Com'r.*
HIRAM FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Spec'l Com'r.*
CLARISSA FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Spec'l Com'r.*

278 STATE OF VIRGINIA, }
County of Cabell. }

I, John Laidley, Jr., dept. clerk for J. S. Witcher, clerk for the county aforesaid, do certify that John Laidley, whose name is signed to the writing above, bearing date 18th of April, 1863, has acknowledged the same before me in my said county to be the act and deed of the principals, the grantors, therein named.

Witness my hand this 18th day of April, 1863.

JOHN LAIDLEY, JR., *Dept. Clk.*

CABELL COUNTY COURT CLERK'S OFFICE, *May 30th*, 1863.

The foregoing deed from John Laidley, special commissioner, to Rebecca Everett was this day presented to me, the clerk of Cabell county court, with the certificate of acknowledgment thereon endorsed. The same is admitted to record.

J. S. WITCHER, *Clk,*
By T. J. MERRITT, *D. C.*

This indenture, made and entered into this 18th day of April, one thousand, eight hundred and sixty-three, between Rebecca Everett, Ephraim M. Frampton and Nancy, his wife, and Hiram Frampton and Clarrissa, his wife, parties of the first part, and David Frampton, of the second part:

Whereas, the circuit court of Cabell county, at the Nov. term, 1862, in a suit there pending, wherein P. H. McCullough and E. M. Frampton were compls. and Rebecca Everett and Hiram Frampton were defts., did direct commissioners to divide a tract of 996 acres

of land between the parties in said suit, and by a further decree at the March term, 1863, the court confirmed the report of said commissioners in their partition, and further ordered and decreed that the parties should perfect the partitions by executing and acknowledging for record apt and proper deeds of conveyance, and on their failing to do so within twenty days from the rising of the court, that John Laidley, a special commissioner, do prepare and in the name and on the behalf of said parties, execute and acknowledge for record a deed or deeds con-eying to those entitled to the several lots as designated by the commissioners' and surveyor's reports. And whereas the said parties have failed to make the said conveyance. This indenture therefore

Witnesseth, that for and in consideration of the premises, the said parties of the first part doth give, grant, bargain, sell, release and confirm unto the said Daivid Frampton and his heirs and assigns, forever, the following-described tract, being lot No. 1 in the division of a tract of land which the parties inherited of Isaac Frampton, Jr., on the Ohio river, in Cabell county, 3 miles below Guyandotte, and bounded as follows: Beginning at a stake, N. E. corner of Samuel Johnston's land, and run-ing with his upper line S. 20¾ E. 308 poles to a stake, N. 80 W. 3 poles and 18 links to a stone, S. 75 W. 113 poles to a stone near a sycamore, corner of Jos. and Sam'l Johnston's; S. 21 E. 112 poles to a stake on Watson's line, and with the same S. 68 W. 60 poles to the "dogwood corner,"
279 S. 21 W. 36 poles to 2 white oaks, 2 beeches and sugar tree; S. 10 W. 114 poles to 3 white oaks on a ridge, S. 65 E. 48 poles to 2 white oaks at Laidley's gate on the hill, N. 84 E. 46 — to a white oak and locust stump, N. 49 E. 160 — to a black oak and chestnut oak, S. 88 W. 110 poles to a stake, from which is a black walnut at N. 21½ E. 2 poles and 17 links, and an apple tree at S. 29½ E. 4 poles; thence N. 29 E. 186 poles to a chestnut oak on a hillside, N. 33 E. 61 poles to 2 double willows, N. 20 W. 332 poles to a stake on the river, S. 73 W. 53 poles and 16 links to the beginning; containing 303 —. To have and to hold the above-described tract of land unto the said David Frampton, his heirs and assigns, forever. And the said parties of the first — doth covenant and agree to warrant and defend the right and title to said tract of land unto the said David Frampton, his heirs and assigns, forever.

In witness whereof, the said parties, by the said John Laidley, as commissioner as aforesaid, hath hereunto set their hands and seals, the day and year first above written.

REBECCA EVERETT, [SEAL.]
By JOHN LAIDLEY, *Sp. Com'r.*
EPHRAIM M. FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Sp. Com'r.*
NANCY FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Sp. Com'r.*
HIRAM FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Sp. Com'r.*
CLARISSA FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Sp. Com'r.*

STATE OF VIRGINIA, *Cabell County,* } *ss:*

I, John Laidley, Jr., dept. clerk for J. S. Witcher, clerk for the county aforesaid, do certify that John Laidley, whose name is signed to the writing above, bearing date 18th day of April, 1863, has acknowledged the same before me in my said county to be the act and deed of the principals therein named.

Witness my hand this 18th day of April, 1863.

JOHN LAIDLEY, *Dept. Cl'k.*

CABELL COUNTY COURT CLERK'S OFFICE, *May 30th*, 1863.

The foregoing deed from John Laidley, special commissioner, to David Frampton was this day presented to me, the clerk of Cabell county court, with the certificate of acknowledgement thereon endorsed. The same is admitted to record.

J. S. WITCHER, *Cl'k,*
By T. J. MERRITT, *D. C.*

But the defendant objected to the reading thereof on the grounds that they were not legally acknowledged so as to allow of their recordation, and therefore they could not be read from the
280 records, nor a certified copy be used as evidence, and that there was no sufficient proof of any judicial authority for making said deeds, and the court sustained the said objections and refuses to allow the said writings to be read as evidence to the jury; to which ruling and opinion of the court the plaintiff excepts, and these his exceptions No. 2 are saved to him.

The plaintiff, to further maintain the issue on his part, proves the following facts, viz:

That the said Richard Brown and Benjamin Brown took possession of the lands conveyed to them as aforesaid by George N. Brown at the date of said conveyance and held the actual, adverse, and exclusive possession thereof under the said deed, by occupation, cultivation, and inclosure, jointly, until the said Richard Brown sold his interest therein to Benjamin Brown and removed therefrom to Kentucky, about 1839, and that the said Benjamin Brown from that time held the actual, adverse, exclusive possession thereof by occupancy, cultivation, and inclosure, and remained so in possession of said land until his death, which occurred in 1848.

That the said Benjamin Brown, at the time of his death, left surviving him the following children, who were his only heirs-at-law, and are the devisees in his said will, to wit, James H. Brown, Ceres Brown, Josephine Osburn (late Brown), and Vesta Laidley (late Brown), and that the said Ceres and Josephine are the same persons who joined with the said James H. Brown in the said deed to Albert Laidley.

That the said heirs-at-law and devisees of the said Benjamin Brown took possession of the said lands so conveyed by the said George N. Brown as aforesaid immediately upon the death of the said Benjamin Brown, and held the actual, adverse, and exclusive

possession thereof, by occupation, cultivation, and enclosure, until the date of the deed of conveyance to Albert Laidley.

That the said Albert Laidley and Vesta, his wife, took possession of the said land under said deed from said James H. Brown and the other heirs and devisees of the said Benjamin Brown aforesaid at the date thereof, and held the actual, adverse, and exclusive possession thereof, by occupation, cultivation, and inclosure, until the date of the said deed to Isaac Frampton; that the said Isaac Frampton took possession of the said land under said deed from Albert Laidley and wife at the date thereof, and held actual, adverse, and exclusive possession thereof, by occupation, cultivation, and inclosure, until his death, in 1859.

That the said Isaac Frampton at the time of his death left surviving him the following children, who were his only heirs-at-law and were the devisees named in his said will, to wit: Rebecca J., who had intermarried with Charles T. Everett; Ephraim Frampton, David Frampton, Hiram Frampton, and Isaac Frampton, Jr.; that the said Isaac Frampton, Jr., to whom the said land was devised by the said will, was living with his said father on the said land when his father died, and that he remained thereon under the said will until his death, which occurred about the year 1860, during
281 all which time he held the actual, adverse, and exclusive possession thereof by occupation, cultivation, and inclosure, and that he died without children, unmarried, and intestate, leaving his brothers and sisters aforesaid his only heirs-at-law.

That a short time before the date of the said decree of March 27th, 1863, a partition of said land was made between the said heirs-at-law of the said Isaac Frampton, Jr., deceased, by John L. Johnson, James H. Poage, and Samuel W. Johnson, who acted as commissioners in making the same; that John L. Johnson, a sworn witness in this cause, proved that they understood that they acted under an order of court; that the notice they had thereof was a paper delivered to them, the entire contents of which witness could not state; that witness thought the said paper was in the handwriting of John Laidley, Esqr., the attorney of the plaintiffs in the suit mentioned in the decree aforesaid of P. H. McCullough and E. M. Frampton, comp'ts, against Rebecca Everette and others, in chancery, and that the style of the said suit appeared in the said paper directing them to make the said partition aforesaid; that they, the said commissioners, proceeded to make the said partition accompanied by James L. Thornburg, a surveyor, who did the surveying; that the said land was laid off by metes and bounds into four lots numbered consecutively 1, 2, 3, and 4, and that lot number 4, which is the land in controversy, was by the said commissioners in their partition and report assigned to the said Rebecca J. Everette; that the said commissioners made out their report and delivered it to the said John Laidley, Esqr., the attorney as aforesaid, and by the direction of the said commissioners the said John Laidley filled some blanks that were left in the report, and the said surveyor, James L. Thornburg, made a report and delivered it to the said John Laidley; that in laying off the said lots they commenced at the lower side of

the land and ran up the river, and that the lot No. 4, assigned to the said Rebecca J. Everette, was on the upper or east side of the land.

That the plaintiff further proved that the heirs-at-law of the said Isaac Frampton, Jr., took possession of the said land, immediately on his death and held the actual, adverse, and exclusive possession thereof by occupation, cultivation, and inclosure until the making of the partition aforesaid, and that immediately upon the completion of the said partition the said heirs-at-law took possession of the part thereof assigned to each of them by the said partition, to wit, the said David Frampton of lot No. 1, Hiram Frampton of lot No. 2, Ephraim Frampton of lot No. 3, and Rebecca J. Everette of lot No. 4, and that the said Rebecca J. Everette held the actual, adverse, and exclusive possession under said partition of said lot No. 4 by occupation, cultivation, and inclosure until the date of her said deed of conveyance to said Sarah H. G. Pennybacker.

And that during all that time the said Rebecca J. Everette had the said lot No. 4 regularly entered on the land books of Cabell county and charged with taxes in her name, and that she paid all the taxes so charged.

That the other heirs-at-law of the said Isaac Frampton, Jr.,
282 took possession of the parts of the said land allotted to them, respectively, immediately after the same was partitioned and assigned to them as aforesaid, and each of them held the actual possession adversely and exclusively of the lot assigned to each, respectively, by occupation, cultivation, and inclosure until they sold them to others.

That after the completion of said partition a paper purporting to be a deed from John Laidley, as special commissioner, to David Frampton for lot No. 1 of said land was found on file in the office of the clerk of the county court of Cabell county, in Guyandotte.

That the leaves of the chancery order book of the said circuit court of Cabell county containing the chancery proceedings of the said court from the 3rd day of April, 1861, to the said 27th day of March, 1863, were cut out of the said book during the recess or vacation between the fall term of said court for 1862 and the said March term, 1863; and that after a diligent and thorough search in the clerk's office of the said court none of the records appertaining to the said suit in chancery mentioned in the said decree of the said March term of 1863, read in evidence herein as aforesaid, can be found or accounted for.

The plaintiff further proved by James H. Brown, a witness in the case, as follows, to wit, that he (witness) was judge of the circuit court of Cabell county in the years 1862 and 1863, and the witness proceeded to make the following statement, to wit: "I remember, after having my mind refreshed by the records and by the evidence of the witnesses examined in this case, very distinctly of holding the court at Guyandotte, as shown by the order of March 27th, 1863, and the March and November terms next preceding, at Barboursville; and I recollect of having the case of McCullough and Frampton *vs.* Rebecca Everett and others before me, and that Mr. John Laidley,

Sen'r, was counsel in the cause, and that a decree was entered in it, but the contents of the decree or decrees I cannot state from memory, but from the foregoing facts I am satisfied that the substance of them is truly recited in the decree of March 27th, 1863, and that I would not enter a decree in the case without knowing at the time that the parties were before the court and that the recitals in the decree of facts were true as recited."

(The defendant, by its attorneys, objected to this statement as evidence to go to the jury, and the court overruled said objection.)

The plaintiff further proved that the said John M. Pennybacker and Sarah H. G. Pennybacker took possession of the said land so conveyed to the said Sarah H. G. Pennybacker by the said Rebecca J. Everette by the deed aforesaid at the date thereof, and held the actual, adverse, and exclusive possession of the said land, under the said deed, by occupation, cultivation, and inclosure, up to and until the date of their said deed to C. P. Huntington therefor, and that during all that time the said land was regularly entered on the land books of Cabell county and charged with taxes in the name of the said Sarah H. G. Pennybacker, and that she paid all of the taxes so charged.

That at the date of the said deed from Rebecca J. Everette to the said Sarah H. G. Pennybacker the said Rebecca was a widow,
283 her husband having died previously thereto, and that the said Sarah H. G. Pennybacker was then living with her husband, the said John M. Pennybacker, and that they continued to live together until the death of the said John M. Pennybacker, which occurred May the 5th, 1881.

That the land in controversy in these consolidated actions and described in the plaintiff's declaration herein is the lot No. 4 partitioned *partitioned* and laid off and assigned to Rebecca J. Everette as aforesaid, and conveyed by her to the said Sarah H. G. Pennybacker as aforesaid, and conveyed by the said Sarah H. G. Pennybacker and her said husband, John M. Pennybacker, to the said C. P. Huntington as aforesaid, and conveyed by the said Huntington to the defendant, The Central Land Company of West Virginia, as aforesaid, and is the same land afterwa-ds conveyed to the said plaintiff, on the 26th day of January, 1882, as aforesaid.

That for the year 1884 the said land is entered on the land books of Cabell county and charged with taxes for that year in the name of John B. Laidley, the plaintiff.

And the said defendant, to maintain the issue on its part, introduced and read in evidence to the jury the following deed and other writings, to wit:

1. A deed from Albert Laidley and wife to C. P. Huntington dated the 13th day of April, 1870, and the certificate of acknowledgement thereon endorsed, in the words and figures following, to wit:

This deed, made the 13th day of April, in the year of 1870, between Albert Laidley and Vesta, his wife, of the first part, and C. P. Huntington, of the second part,

Witnesseth, that in consideration of the sum of thirty-six thou-

sand, six hundred and seventy-three $\frac{50}{100}$ dollars, the receipt of which is hereby acknowledged, the said party of the first part doth grant unto the said party of the second part all of two certain tracts or parcels of land, lying in the county of Cabell, State of West Virginia, and in the township of Guyandotte, bounded and described as follows, to wit:

One tract containing two hundred and ninety-nine acres, bounded and described as follows: Beginning at a stake, northeast corner of S. W. Johnston's land, and running with the upper line thereof S. 20¾° E. 308 p. to a stake; thence N. 80° W. 3 poles and 18 links to a stone, thence S. 75° W. 115 poles to a stone near a sycamore tree, southwest corner of S. W. Johnston's land; thence S. 21° E. 112 po. to a stake on Watson's line, at a dogwood, thence with s'd Watson's line S. 68 W. 60 po. to the dogwood corner; thence S. 21° W. 36 poles to two wht. oaks, beeches and sugar tree; south 10° W. 114 poles to three wht. — on a ridge, S. 65 E. 48 poles to 2 wht. oak-, N. 81° E. 46 poles to wht. oak and locust stump, N. 49 E. 160 po. to a blk. oak and chestnut oak, S. 88° W. 110 po. to a stake, from which a black walnut — N. 21½ E. 2 p. and 7 links, and an apple tree S. 29½ W. 4 po. stands; north 29 E. 186 p. to a chestnut oak on a hillside, N. 33° E. 61 po. to two double willows, N. 20 W. 186 po. to a stone, S. 70 W. 25 poles, 15 links, to a stone; N. 20 W. 25
284 poles to a stone near the turnpike, N. 70° E. 25 p. and 15 links to a stone, N. 20 W. 121 p. to a stake on the Ohio river, S. 70 W. 53 p. and 16 links to the beginning; it being the same which was conveyed to me on the 22nd day of March, 1870, by deed of Jno. L. Johnston and Mary Jane, his wife, and Wm. L. Johnston and Susan, his wife, by deed recorded in Deed Book B, page 422, of Cabell county.

One tract containing one hundred and ten acres, situate in Cabell county, and bounded on the southeast by F. D. Beuhring, on the east by E. M. Frampton, and on the north by the lands formerly of Wm. Land, J. L. Johnston, and hereinbefore described, and parcel of a certain tract of 800 acres of the s'd Laidley, fully described in a deed of O. A. and E. McGinnis, recorded in Deed Book J, page 441, of Cabell county, which is to be laid off by the party of second part, or under his direction, by line which shall not cross the Porterfield ridge, and the *meets*, bounds and abuttals so established shall be regarded as the *meets*, bounds and abuttals intended by this conveyance, but not including one and half acres sold to Sam'l Allen by s'd Laidley, and also his entire interest in a tract of land containing 240 acres, purchased of J. M. Pennybaker and wife by s'd Laidley and conveyed by his directions to C. P. Huntington, the title to which the s'd Laidley covenants to warrant and defend generally. And the said party of the first part doth hereby covenant with the said party of the second part that he will warrant generally the property hereby conveyed.

Witness the following signatures and seals.

ALBERT LAIDLEY. [SEAL.]
VESTA LAIDLEY. [SEAL.]

STATE OF WEST VIRGINIA, *Cabell County,* } *To wit:*

I, Jno. W. Church, notary public in and for the county and State aforesaid, do certify that Albert Laidley and Vesta Laidley, his wife, whose names are signed to the writing hereto annexed, bearing date on the 13th day of April, 1870, have acknowledged the same before me in my county aforesaid, and the said Vesta Laidley, being examined by me privily and apart from her husband and having the writing aforesaid fully explained to her, she, the said Vesta Laidley, acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 13th day of April, 1870.

JOHN W. CHURCH.
Notary Public.

STATE OF WEST VIRGINIA, *Cabell County.* }

RECORDER'S OFFICE, *April* 16, 1870.

The foregoing deed, with U. S. internal revenue stamps thereon for thirty-seven (37) dollars, was this day presented in said office, and, together with the certificate thereon, admitted to record.

Teste: TH. J. HAYSLIP, *Recorder.*

285 The plaintiff objected to the introduction of this deed in evidence when it was offered on the grounds that it does not describe the land in controversy in this case and because it is irrelevant to the issue herein, and the court overruled the said objections and permitted the said deed to be read in evidence to the jury, which was done, and the plaintiff then and there excepted to the said opinion and decision of the court in overruling his objections and permitting the said deed to be read in evidence to the jury, which said exceptions No. 3 are saved to him.

2. A deed from the said John M. Pennybacker and Sarah H. G. Pennybacker to Warren J. Parsons, and the certificate of acknowledgement thereon indorsed, in the words and figures following, to wit:

This deed, made this 20th day of February, 1874, between Sarah H. Pennybacker and John M. Pennybacker, her husband, of the first part, and Warren J. Parsons, of the second part,

Witnesseth, that for and in consideration of the sum of five thousand and two hundred dollars, the receipt whereof is hereby acknowledged, the party of the first part doth hereby grant unto Warren J. Parsons, party of the second part, a certain lot or parcel of land, situate in the city of Huntington, county of Cabell and State of West Virginia, containing one acre, and more particularly described in a deed of the party of the first part to C. P. Huntington, on file in the clerk's office of the county court of Cabell county, as reservation of one acre of land at the corner of the field where the lane and turnpike road intersect and whereon a grocery storehouse stands. Beginning at a stake on the side of the turn-

pike road and the west side of Beuhring's lane on my line; thence with the turnpike two hundred and ten feet to a stake; thence S. 19° E. two hundred and ten feet to a stake; thence east and parallel with said turnpike, two hundred and ten feet to a stake; thence with said line N. 19° W. two hundred and ten feet to the beginning; with all the rights and privileges of said reservation or appertaining to said lot of land, together with all buildings thereon. To have and to hold the same to himself, heirs, and assigns, forever. The party of the first part hereby warrant- generally the property herein conveyed.

Witness the following signatures and seals, the day and year first above written.

S. H. PENNYBACKER. [SEAL.]
J. M. PENNYBACKER. [SEAL.]

STATE OF WEST VIRGINIA, *Cabell County,* } *To wit:*

I, H. C. Simms, a notary public in and for the county and State aforesaid, do hereby certify that S. H. Pennybacker and J. M. Pennybacker, whose names are signed to the writing above, bearing date the 20th day of February, 1874, have this day acknowledged the same before me in my said county, and I do further certify that S. H. Pennybacker, the wife — J. M. Pennybacker, whose
286 names *are* signed to the writing above, bearing date the 20th day of February, 1874, personally appeared before me in my county aforesaid, and, being examined by me privily and apart from her husband and having said writing fully explained to her, she, the said S. H. Pennybacker, acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 20 day of February, 1874.

H. C. SIMMS,
Notary Public.

STATE OF WEST VIRGINIA, *Cabell County,* } *ss:*

In the clerk's office of the county court of said county.

This deed from S. H. Pennybacker and J. M. Pennybacker to Warren J. Parsons, bearing date on the 20th day of February, 1874, was this day presented to me, the clerk of the county court of said county. The same, together with the certificate of acknowledgement thereon endorsed, is admitted to record.

Given under my hand this 17 day of April, 1874.

JOS. S. MILLER, *Clerk.*

3. The record of a suit in chancery in the circuit court of Cabell county, wherein the said Sarah H. G. Pennybacker was plaintiff and John M. Pennybacker and others were defendants, in the words and figures following, to wit:

STATE OF WEST VIRGINIA:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the — day of ——, 18—.

SARAH H. PENNYBACKER *vs.* JOHN M. PENNYBACKER ET AL. } In Chancery.

Be it remembered that heretofore, to wit, in vacation on the 23rd day of July, 1872, the plaintiff, by her attorney, presented her petition to the Hon. C. W. Smith, judge of the circuit court of Cabell county, in the State of West Virginia, praying an injunction to be awarded by the judge aforesaid against T. J. Hayslip, trustee, and others, which petition and the exhibits therewith filed and the order thereon endorsed *is* in the words and figures following, to wit:

287 To the Hon. C. W. Smith, judge of the circuit — of Cabell Co., West Va.:

The bill of complaint of Sarah H. Pennybaker against John M. Pennybaker, T. J. Hayslip, trustee, and H. J. Samuels, George Rowland, Samuel Hupp, Wm. H. Pennybaker, J. S. Pennybaker, and James Pennybaker and David Harsbarger.

The plaintiff complains *as* says that on the 28th day of June, 1860, she was married to the said John M. Pennybaker; that after that time her father, Henry H. Owings, settled upon her a farm in the county of Cabell, by deed bearing date August 18th, 1865, executed by R. J. Everett to the complainant, which is herewith filed, marked "A," as a part of this bill; that afterwards, upon the death of her father, she became possessed of the further sum of $2,000, all of which she held in her own right and free free from the debts or control of her husband; that afterwards, on the 25th day of Feb'y, 1870, she sold the said Everett farm to C. P. Huntington for $11,000, as will be seen by deed herewith filed, marked "B," as part of this bill; that the said John M. Pennybaker then collected this said sum of $11,000 for the purpose of investing the same for the benefit of said complainant according to her directions; but instead of so doing proceeded, without her knowledge or consent, to invest the same for his own benefit and use and in his own name; that with a portion of this $11,000 the said John M. Pennybaker purchased of one Larkin Noel a certain tract of land in the said county of Cabell, and took therefor a deed to himself, which is herewith filed, marked "C," as a part of this bill, and particularly referred to for description of the premises herein referred to; that afterwards, with another portion of this fund, he, in connection with one E. T. Mitchell, purchased another farm of one Jacobs in like manner, as will be seen by deed herewith filed, marked "D," as part of this bill; that besides these investments he loaned or invested to or with Samuel Hupp about $2,000 of said money, and to Wm. H. Pennybaker about $1,400, and to J. S. Pennybaker about $400, and to James Penny-

baker about $300. The plaintiff avers that each of these parties knew to whom this money belonged and how the said John M. Pennybaker came into possession thereof; that afterwards, on the 20th day of July, 1871, the said John M. Pennybaker executed to the said T. J. Hayslip, trustee, a deed of trust upon the said Noel farm to secure the said H. J. Samuels the payment of a certain note he held against the said John M. Pennybaker for $951.11, which is herewith filed, marked " E," as part of this bill.

Now, the complainant avers and distinctly charges that the said H. J. Samuels was well and fully acquainted with her claim to and equitable ownership of the said Noel farm at the time he procured the execution of the said deed of trust, and therefore knew that the deed to the said John M. Pennybaker was a fraudulent conversion of the said complainant's funds and rights; that said John M. Pennybaker contracted with the said George Rowland to sell to him the one-half interest above referred to in the Jacobs farm, and
288 took in part payment therefor a bond or note of the said George Rowland for some $700 or $800 *dollars*, which he assigned to the said David Harshbarger as collateral security for one of his individual debts to said Harshbarger. Now, the plaintiff avers that both Rowland and Harshbarger knew the nature of John M. Pennybaker's title to the said land, and that the same had been bought with her money, and was in equity her sole and separate property, and could acquire no rights by their aforesaid transactions. In view of all these facts, and being without remedy save in your honorable court, the complainant prays the said deed of Larkin *to* Noel — John M. Pennybaker be set aside and the lands therein mentioned be conveyed by proper deed to herself; that the deed of Wm. A. Jacobs be set aside and the lands therein mentioned be conveyed to her along with said Mitchell, and that the sale of the same to the said Rowland be set aside and she have a decree for her joint possession of the same with the said Mitchell, or in that fail-ng that the said Harshbarger be compelled to deliver the above-mentioned note or bond of the said George Rowland to the said complainant; that the said T. J. Hayslip, trustee as aforesaid, and the said H. J. Samuels, beneficiary under said trust, be restrained and enjoined from selling under said deed, as she is advised they have advertised to do, or from taking any steps whatsoever to enforce the same until her rights thereto have been adjudicated; and that the said Hupp, Wm. H. Pennybaker, J. S. Pennybaker, and James Pennybaker be restrained and enjoined from paying over the said monies or any part thereof to the said John M. Pennybaker, and may be required to pay over the — to the said plaintiff, and to that end she asks that it may be referred to one of the commissioners of your honor's court to take and state an acc't with each of the above last-named parties to ascertain how much money they respectively obtained from the said John M. Pennybaker; and that after all these things have been done that she may have a decree against the said John M. Pennybaker for the balance of the $11,000 that may then be found due and unpaid and unaccounted for by the said John M. Pennybaker, and all such other and further relief as your

honor may find her entitled to in the premises; and, as in duty bound, &c.

SARAH H. PENNYBAKER.

EUSTACE GIBSON, *Counsel.*

STATE OF WEST VIRGINIA, *Cabell County,* } *To wit:*

Sarah H. Pennybaker, the plaintiff named in the foregoing bill, being duly sworn, says that the facts and allegations therein contained so far as they are stated on her own knowledge are true, and that so far as they are stated upon information she believes them to be true.

S. H. PENNYBACKER, *Pl'ff.*

Taken, sworn to, and subscribed before me this 17th day of July, 1872.

A. J. ENSLOW, *Justice.*

289 (Indorsement on bill.)

Injunction granted, as prayed within, restraining, enjoining, and inhibiting T. J. Hayslip, trustee, and H. J. Samuels from proceeding further to sell the lands mentioned in the trust deed executed by John M. Pennybaker to *to* said Hayslip for the use of said Samuels, and Samuel Hup, Wm. H., J. S., and James Pennybaker from paying over any monies due from them to John M. Pennybaker until the further order of the circuit court of Cabell county; but this injunction is not to take effect until the complainant, or some one for her, enter into a bond, with good securi-, in the penalty of five hundred dollars, conditioned according to law, before the clerk of said court.

July 23, 1872.

C. W. SMITH.

To J. S. Miller, clerk Cabell circuit court.

Exhibit "A," referred to in the foregoing bill, is in the words and figures following, to wit:

(The said deed has been heretofore copied herein. See page 46 of this record.)

Exhibit "B," referred to in the foregoing bill, is in the words and figures following, to wit:

(The said deed has been heretofore copied herein. See page 51 of this record.)

Exhibit "C," referred to in the foregoing bill, is in the words and figures following, to wit:

This deed, made this 3rd day of March, 1870, between Larkin Noel and Mary Noel, his wife of the first part, and John M. Pennybaker, of the second part, all of the county — Cabell, and State of West Virginia.

Witnesseth, that in consideration of the sum of fifteen hundred

($1,500) dollars, the receipt of which is hereby acknowledged, the said party of the first part doth grant unto the said party of the second part all that certain tract or parcel of land, lying and being in the county of Cabell, State of West Virginia, bounded and described as follows, to wit: Beginning at two poplar stumps on the south side of Four-pole creek, near the crossing thereof, S. 21 E. 42 poles to a stake on a hillside, S. 66½° W. 33 poles to a large stone in a drain, N. 17½° W. 37 poles to a beech tree on the line between C. T. Everett and J. Harvey Poage, N. 72½ E. 52½ poles to a stone in the line between J. Harvey Poage and the Holderby heirs, thence S. 6° E. 96 poles to the beginning; containing 31¾ acres, be the same more or less, with all and singular the appurtenances thereunto belonging or in anywise appertaining; the said 31¾ acres being the same land that was conveyed to said Larkin Noel by deed from John C. Thornton and Anna M. Thornton, his wife, bearing date on the 5th day of April, 1866, and entered of record in
290 the recorder's office of Cabell county, West Virginia, in Deed Book **A**, page 312. And the said party of the first part doth hereby covenant with the said party of the second part that they will warrant and defend the property hereby conveyed.

Witness the following signatures and seals:

LARKIN x NOEL. (his mark.) [SEAL.]

MARY x NOEL. (her mark.) [SEAL.]

STATE OF WEST VIRGINIA, *Cabell County*, } *ss:*

I, Thomas J. Hayslip, recorder in and for the county and State aforesaid, do certify that Larkin Noel and Mary Noel, his wife, whose names are signed to the writing hereto annexed, bearing date on the 3rd day of March, 1870, have acknowledged the same before me in my said county; and the said Mary Noel, being examined by me privily and apart from her husband and having the writing aforesaid fully explained to her, she, the said Mary Noel, acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 3rd day of March, 1870.

TH. J. HAYSLIP, *Recorder.*

STATE OF WEST VA., *Cabell Co.*, } *ss:*

RECORDER'S OFFICE.

This deed from Larkin Noel and wife to John M. Pennybaker was this day presented to me, the recorder of Cabell county, together with the certificate of acknowledgement thereon endorsed. The same is admitted to record.

Given under my hand this 9th of March, 1870.

TH. J. HAYSLIP, *Recorder.*

I certify that the foregoing writing hereto annexed *to be* a true copy of the deed of Larkin Noel and wife to John M. Pennybaker as entered of record in the recorder's office of Cabell county, West Va., in Deed Book B, page 399.

Given under my hand July 15, 1872.

TH. J. HAYSLIP, *Recorder.*

Exhibit "D," referred to in the foregoing bill, is in the words and figures following, to wit:

This deed, made this 20th day of July, A. D. 1871, by and between John M. Pennybaker and Sarah, his wife, of the first part; T. J. Hayslip, of the second part, and H. J. Samuels, of the third part, all of Cabell county, West Virginia,

Witnesseth, that said parties of the first part doth hereby grant unto the said T. J. Hayslip all that tract of thirty-four acres of land, lying on the south side of Four-pole creek, back of Huntington and in the county aforesaid, and conveyed to said Pennybaker by
291 deed recorded in Cabell county recorder's office, Book B (late series), page- 399 and 400, to which deed reference is given for boundaries.

Upon trust, nevertheless: whereas, said Pennybaker has this day executed his note to said Samuels for $951.11 cts., due 18th March, 1872, and to secure *and to secure* the payment of which this deed is executed.

Now, if said Pennybaker shall fail to pay said sum of money when the same shall become due, then said T. J. Hayslip, on request of said Samuels, shall advertise and sell the above-described land as required by the laws in such cases, prescribed by the code of West Va., pay said Samuels his debt, then due, and the costs incurred and the residue pay said Pennybaker. But if said Pennybaker, at any time before a sale, shall fully pay off said Samuels' debt and interest and any costs he may have incurred, then this trust deed to be null and void and held for naught.

Witness the following signature and seal.

J. M. PENNYBAKER. [SEAL.]

STATE OF WEST VA., *Cabell County,* } *ss:*

I, Thomas J. Hayslip, recorder in and for the county and State aforesaid, do certify that J. M. Pennybaker, whose name is signed to the foregoing writing hereto annexed, bearing date on the 20th day of July, 1871, personally appeared before me in said county and acknowledged the same to be his act.

Given under my hand this 31st day of July, 1871.

THOS. J. HAYSLIP, *Recorder.*

RECORDER'S OFFICE, CABELL CO.,
WEST VIRGINIA, *July* 31, 1871, *ss:*

This trust deed from J. M. Pennybaker to H. J. Samuels, with U. S. rev. stamp thereon for $1.00, was this day presented in said

office and, together with the certificate thereon endorsed, admitted to record.

Teste: TH. J. HAYSLIP, *Recorder*,
By T. J. F. HAYSLIP, *Dept.*

I certify that the foregoing writing hereto annexed is a true copy of the deed of trust executed by J. M. Pennybaker to H. J. Samuels, as entered of record in the recorder's office of Cabell county, West Va., in Trust Deed Book A, page 284.

Given under my hand this 15th July, 1872.

TH. J. HAYSLIP, *Recorder.*

Exhibit " E," referred to in the foregoing bill, is in the words and figures following, to wit:

This indenture, made and entered into this 11th day of August, 1870, between William A. Jacobs and Mary Jacobs, his wife,
292 of the first part, and E. T. Mitchell and J. M. Pennybaker, of the second part, witnesseth:

That for and in consideration — nine hundred dollars in hand paid by the party of the second part to the parties of the first part, said party of the first part hath this day bargained and sold, and do by these presents convey unto the partys of the second part the following-described tract of land, lying and being in the county of Cabell and State of West Virginia, situate on the Ohio river and adjoining Four-pole creek and bounded as follows, viz: Beginning at a stake on the north side of the left-hand fork of Four-pole creek on the line of James L. Thornburg, thence with the said creek 47 poles to a stone 2 poles south of a sycamore tree, N. 2 E. 27 poles to a stone on the south side of the turnpike road, thence with the said turnpike N. 87½ E. 28 poles, N. 62½ E. 9 poles and 6 links to a stake on J. L. Thornburg's line; thence S. 16° E. with Thornburg's line — the beginning; containing four acres, be the same more or less. To have and to hold said tract of land, with the improvements, &c., thereon, unto the said parties of the second part, their heirs and assigns, forever. And the said parties of the first part covenant to and with the said parties of the second part, that they will warrant the title to said tract of land against the claim or claims of all persons whomsoever.

In testimony whereof, the parties of the first part have hereunto set their hands and affixed their seals the date above written.

Stamp, $1.00.

his
WILLIAM A. x JACOBS. [SEAL.]
mark.

her
MARY x JACOBS. [SEAL.]
mark.

Witness:
GEO. A. CONNER.
CHAS. CONNER.

STATE OF KENTUCKY, *Greenup County,* } *sct:*

I, George A. Conner, clerk of the county court for the county and State aforesaid, certify that the foregoing deed from William A. Jacobs and Mary Jacobs, his wife, to E. T. Mitchell and J. M. Pennybaker was this day presented to me in my office and duly acknowledged by the parties thereto to be their act and deed for the uses and purposes therein mentioned, and the contents and effects of the said instrument being explained by me to the said Mary Jacobs, wife of the said William A. Jacobs, separate and apart from her said husband, she thereupon declared that she did freely and voluntarily execute and deliver the same to be her act and deed and consented that the same might be recorded.

Given under my hand and official seal this 11th day of August, 1870.

GEO. A. CONNER,
Clerk G. C. C.

293

RECORDER'S OFFICE,
CABELL COUNTY, WEST VIRGINIA, *ss:*

This deed, from William A. Jacobs and wife to E. T. Mitchell and J. M. Pennybaker, was this day presented to me, the recorder of the county and State aforesaid, together with the certificate of acknowledgement thereon endorsed. The same is admitted to record.

Given under my hand this 15th day of August, 1870.

TH. J. HAYSLIP, *Recorder,*
By JNO. W. CHURCH, *Dept.*

RECORDER'S OFFICE, CABELL COUNTY,
WEST VIRGINIA, *July* 15, 1872, *ss:*

I, Thomas J. Hayslip, recorder in and for the county and State aforesaid, do certify that the writing hereto annexed is a true copy of the deed from Wm. A. Jacobs and wife to E. T. Mitchell and Jno. M. Pennybaker as entered of record in the recorder's office of Cabell county, W. Va., in Deed Book C, page 27.

Teste: TH. J. HAYSLIP, *Recorder.*

And on another day, to wit:

On the 26th day of July, 1872, the plaintiff sued out of the clerk's office of the circuit court of Cabell county a writ of summons against T. J. Hayslip and H. J. Samuels, which writ, together with the endorsement and sheriff's return, is in the words and figures following, to wit:

The State of West Virginia to the sheriff of Cabell county, Greeting:

We command you that you summon H. J. Samuel, T. J. Hayslip to appear before the judge of our circuit court of Cabell county at

rules to be held in the clerk's office of said court on the first Monday in August next to answer a bill in chancery exhibited against them and others in the said court by Sarah H. Pennybaker, and have then there this writ.

Witness Jos. S. Miller, clerk of said court, at the court-house of said county, the 26th day of July, 1872, and in the 10th year of the State.

JOS. S. MILLER, *Clerk.*

(Endorsement.)

By an order of the judge of the circuit court of Cabell county the defendants T. J. Hayslip, trustee, and H. J. Samuels are restrained, enjoined, and inhibited from proceeding further to sell the land mentioned in the deed of trust executed by John M. Pennybaker to said Hayslip for the use of said Samuels until the further order of the court, the plaintiff having given the necessary bond as required by said order.

Teste: JOS. S. MILLER, *Clerk.*

294 (*Sheriff's Return.*)

Executed July 29th, 1872, by delivering an office copy thereof to H. J. Samuels and T. J. Hayslip.

GEO. F. MILLER, *Dept.*,
For D. I. SMITH, *S. C. C.*

The bond referred to in the endorsement is in the words and figures following, to wit:

Know all men by these presents, that we, Sarah H. Pennybaker and E. Gibson and L. C. Ricketts, are held and firmly bound unto John M. Pennybaker, T. J. Hayslip, H. J. Samuels, George Roland, Samuel Hupp, Wm. H. Pennybaker, J. S. Pennybaker and James Pennybaker and David Harshbarger in the just and full sum of five hundred dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, administrators, &c., jointly and severally, firmly by these presents.

The condition of the above obligation is such that, whereas, Sarah H. Pennybacker has obtained from the judge of the circuit court of Cabell county an order of injunction restraining and enjoining and inhibiting T. J. Hayslip, trustee, and H. J. Samuels from proceeding further to sell the lands mentioned in a certain trust deed executed by John M. Pennybaker to said Hayslip for the use of said Samuels, as set out in plaintiff's bill; and has also restrained, enjoined and inhibited the defendants Samuel Hupp, Wm. H. Pennybaker, J. S. Pennybaker and James Pennybaker from paying over any moneys due from them to John M. Pennybaker until the further order of the court; which injunction was not to take effect until the plaintiff, or some one for her, enter into bond, with sufficient security, in the penalty of $500.00, conditioned according to law.

Now if the said Sarah H. Pennybaker shall well and truly pay all costs and damages which may be awarded against her, or sustained by any person by reason of the granting of said injunction in case the same should be dissolved, then this obligation to be void; else, it shall remain in full force and effect.

SARAH H. PENNYBAKER. [SEAL.]
EUSTACE GIBSON. [SEAL.]
LUCIEN C. RICKETTS. [SEAL.]

Acknowledged and approved, July 26, 1872.

JOS. S. MILLER, *Clerk.*

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 16th day of December, 1872, there was an order made in this cause, which is in the words and figures following, to wit:

295 SARAH PENNYBAKER *vs.* JOHN PENNYBAKER ET AL. } In Chancery.

This cause coming on this day to be heard on the bill and exhibits therewith filed, and upon argument of counsel and by the consent of the parties, the court doth adjudge, order, and decree that all the property, both real and personal, set forth in said bill, except the tract of land known as the Jacobs farm, be conveyed to the said Sarah H. Pennybaker free from the debts and control of her husband, the said John M. Pennybaker, but that *but that* the said Sarah H. Pennybaker take the Noel farm, subject to the deed of trust held by Thomas J. Hayslip for the benefit of H. J. Samuels upon the said Noel farm and subject to a deed of trust for the benefit of Albert Laidley upon the same; and that she further secure and pay a balance of two hundred and thirty-five dollars due upon a note for $1,400 executed by the said John M. Pennybaker to David Harshbarger, bearing date March 21st, 1871, with interest thereon from this date, but that the said Sarah H. Pennybaker shall be allowed nine months within which to pay the said Harshbarger debt; and for the purpose of carrying out the object of this decree the court doth order and adjudge that Eustace Gibson be, and he is hereby, appointed a special commissioner to convey by deed the said property herein adjudged her to the said Sarah H. Pennybaker; and this cause is continued.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 19th day of December, 1873, there was another order made in this cause, which is in the words and figures following, to wit:

SARAH H. PENNYBACKER
vs.
JOHN M. PENNYBACKER ET AL. } In Chancery.

This cause came on this day to be further heard upon the bill and exhibits, the decree heretofore rendered, and the papers heretofore filed in this cause, and having been argued by counsel, and it appearing to the court, in consideration of all the facts, &c., that the said Sarah H. Pennybacker is indebted to David Harshbarger in the sum of two hundred and thirty-five dollars, with interest on the same from the 15th day of December, 1872, amounting to $14.10, the court doth therefore adjudge, order, and decree that the said David Harshbarger have judgment against the said Sarah H. Pennybacker for the aforesaid debt and interest, amounting to $249.10, together with a statute fee of $20.00 for his costs in that behalf expended, and that the said Harshbarger have execution therefor within ten days from the rising of this court, and if said execution is not paid within one hundred and twenty days from its delivery to the sheriff of Cabell county by the said S. H. Pennybacker or by some one for her, that then Eustace Gibson, who is hereby appointed a special commissioner for that purpose, shall proceed to sell the
296 tract of land mentioned in the bill as the Noel tract and described fully in Exhibit "C" filed with the bill of the said S. H. Pennybacker, after giving thirty days' notice of such sale in the Huntington Independent and posting a copy of said notice for a like period upon the front door of the court-house of Cabell county. The said commissioner shall sell said tract, or so much thereof as may be necessary to satisfy said debt and costs, upon the following terms, one-third of the purchase-money cash in hand on day of sale, one-third in four months, and the remaining one-third in eight months from day of sale, and shall require the purchaser to give bond, with good security, for the deferred payments, and shall retain the legal title until all the purchase-money is paid; but the said commissioner, before he proceeds to execute this decree by selling the property aforesaid, shall give bond, with good security, to be approved by the clerk of this court, in the sum of three hundred dollars for the faithful performance of his duties as such commissioner; and this cause is continued, this decree being prepared by and consented to by the counsel of Sarah H. Pennybaker.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 3rd day of June, 1874, there was another order made in this cause, which is in the words and figures following, to wit:

SARAH PENNYBACKER ET AL.
vs.
JOHN PENNYBACKER. } In Chancery.

On motion of plaintiffs, by attorney, this case is dismissed.

The plaintiff objected to the introduction of this record in evidence when it was offered because neither the plaintiffs nor the defendant

The Central Land Company of West Virginia nor the said C. P. Huntington were parties thereto, and because it is irrelevant to the issue to be tried herein.

The court overruled the objections so far as to allow the said record to be read in evidence upon the question of whether or not the said Sarah H. G. Pennybacker held a separate estate in the said land, and upon the question of the statute of limitations relied upon by the defendant in this case as a defence to the plaintiff's action, and for no other purpose; to which ruling, decision, and opinion of the court the plaintiff duly excepts, and this his 4th exception is saved to him.

4. A paper executed and delivered by the plaintiff to the said Sarah H. G. Pennybacker, dated the 27th day of January, 1882, in the words and figures following, to wit:

Whereas Mrs. S. H. G. Pennybacker has, on yesterday, made me a general warranty deed, bearing date this 26 Jan'y, 1882, for 240 acres of land known as lot No. 4 of the Isaac Frampton estate: Now, I bind myself, my heirs, &c., that I will never sue or cause to be sued Mrs. S. H. G. Pennybacker or her heirs upon the war-
297 ranty in said deed in case of failure of her title thereby conveyed for valuable consideration.

Witness my hand and seal this 27 Jan'y, 1882.

JOHN B. LAIDLEY. [SEAL.]

The said defendant then proved by divers witnesses the following facts:

That the said C. P. Huntington took possession of the land in question in this suit under his said deed from the said John M. and Sarah H. G. Pennybaker at the date of said deed and held the actual, adverse, and exclusive possession thereof under said deed by occupation, cultivation, and inclosure until he sold the same to the defendant The Central Land Company of West Virginia as aforesaid, and that during all that time the said land was regularly entered on the land books of Cabell county and charged with taxes in the name of the said C. P. Huntington, and that he, the said Huntington, paid the whole of the taxes charged thereon.

That the said defendant, The Central Land Company of West Virginia, took possession of the said land so conveyed to it by the said C. P. Huntington under the said deed at the date thereof and has held the actual, adverse, and exclusive possession thereof under said deed by occupation, cultivation, and enclosure from that time until the present, and that during all that time the said land has been regularly entered on the land books of Cabell county and charged with taxes in the name of the said defendant, The Central Land Company of West Virginia, and that the said defendant has paid the whole of the taxes so charged thereon.

That from the date of the said deed from J. M. Pennybacker and wife to the said C. P. Huntington down to the present year, 1884, the said land in controversy in this suit has not been entered on the land books of Cabell county and charged with taxes in the name either of the said John M. Pennybacker or the said Sarah H. G.

Pennybacker or in any other name but that of the said C. P. Huntington and of the said defendant, The Central Land Company of West Virginia, and that no taxes have been paid on the said land during those years except the taxes paid by the said C. P. Huntington and by the said defendant, The Central Land Company of West Virginia.

That the said C. P. Huntington, at the date of his said deed from said John M. Pennybacker and Sarah H. G. Pennybacker, his wife, paid to the said John M. Pennybacker, with the consent of his wife, eleven thousand dollars, the whole of the consideration for said land mentioned in said deed, and that from that time to the date of the said deed from the said Sarah H. G. Pennybacker to the said plaintiff, John B. Laidley, neither the said John M. Pennybacker nor the said Sarah H. G. Pennybacker set up or made any sort of claim, legal or equitable, to the said land or any part of it so conveyed by them to the said C. P. Huntington as aforesaid, and that neither of them during all that time did or attempted to do any act hostile to the claim and title of the said C. P. Huntington or the said defendant to the said land until the execution by the said Sarah H. G. Pennybacker of the said deed to the said plaintiff, John B. Laid-
298 ley, as aforesaid; and the defendant proved by the witness, Sarah H. G. Pennybacker, that the said deed from her, the said Sarah H. G. Pennybacker, to the said plaintiff was not made at her own instance or suggestion, but at the solicitation and suggestion of the said plaintiff; that the plaintiff of his own accord called upon her, the witness, Sarah H. G. Pennybacker, at her residence in the city of Huntington, and informed her that she had an interest in or claim to the land in controversy in this suit, notwithstanding the said deed of herself and husband to said C. P. Huntington therefor, and he advised her to commence a suit against the defendant, The Central Land Company of West Virginia, to enforce the same and offered to prosecute the same for one-half of whatever might be recovered (he being a practicing attorney), and that she then and there informed him that she and her said husband had sold and conveyed said land to said C. P. Huntington for $11,000.00 and had received the purchase-money therefor from him, and that she had no claim to the land, and that she declined to bring suit as suggested by the plaintiff; that the plaintiff then told her to consult some of her friends upon the matter, and that he would call upon her again in a few days for her answer, which he did, and that at this second interview she, the said Sarah H. G. Pennybacker, refused to bring suit against the defendant, and that she repeated to the plaintiff that, having sold the land to C. P. Huntington and got the pay, she neither had nor made any claim to it, and she further stated that she had no money to carry on a lawsuit with; that upon her refusal to bring suit at the last interview the plaintiff then asked her if she would sell and convey her interest in the land to him, and that she told him her son was given employment at the railroad shop, and that if she did so she feared they would discharge him, and that his wages was necessary to her support. The plaintiff then told her if they did discharge him that

he, the plaintiff, would insure him employment. She thereupon asked him what he would give her for her interest, and he answered, $500.00, and she accepted his offer; and he afterwards gave her the writing bearing date the 27th day of January, 1882, and she executed the deed to him bearing date the 26th day of January, 1882, and he paid her in cash $100.00 and gave her his notes for $400.00, the residue of the purchase-money, and that at the time of said agreement of sale and the said conveyance she understood from the plaintiff, both then and at the first interview and all the time, that he, the plaintiff, was purchasing her dower interest in said land and nothing more, and that she supposed that was all she was conveying to him; and that the said plaintiff afterwards made the witness, the said Sarah H. G. Pennybacker, a small payment on said notes, and, she being in great need of money, she sold and assigned the residue thereof at a discount to a gentleman in Huntington, and that all she realized from the said sale and conveyance to the plaintiff was the sum of $325.00.

That the said plaintiff, the said John B. Laidley, before and at the time of the said sale and conveyance of the said land to
299 him as aforesaid, had full and complete actual notice of the said sale and conveyance of the same land to the said C. P. Huntington by the said John M. Pennybacker and said Sarah H. G. Pennybacker as aforesaid, and that the said C. P. Huntington had paid the whole of the purchase-money therefor as aforesaid, and had taken and held the possession thereof as aforesaid, and that said C. P. Huntington had sold and conveyed the said land to the defendant, The Central Land Company of West Virginia, as aforesaid, and that the said defendant had taken and held possession of the said land and still held such possession as aforesaid.

And here the defendant rested.

And thereupon the plaintiff had himself sworn to give evidence as a witness in rebuttal, and the said plaintiff, as a witness, proved as follows:

That he, plaintiff, before he bought of the said Sarah H. C. Pennybacker, informed her that she had the fee-simple interest and not a dower or life interest only in the land in controversy; that she, in her first and second conversations with him, plaintiff, upon the subject, declined to bring suit because she was too poor to carry on the litigation and because she would thereby cause her son to be discharged from service in the C. & O. employ, where he was getting $50.00 per month, and because she would rather have the $500 certain than the risk of the suit and risk of losing her son's wages.

And here the plaintiff rested his case.

And the court certifies that the foregoing were all the papers read and all the facts proved on the trial of these consolidated actions.

The plaintiff having declared his purpose, upon the introduction by him of the deed of John M. and Sarah H. G. Pennybacker to C. P. Huntington in evidence, to ask the court to instruct the jury as to the legal effect of said deed, he now moved the court to instruct the jury as follows:

"The court instructs the jury that the deed executed by J. M. Pennybacker to C. P. Huntington, bearing date the 25th day of Feb-

ruary, 1870, offered in evidence by the plaintiff and purporting to be also signed by S. H. G. Pennybacker and purporting to be also acknowledged by Sarah H. G. Pennybacker, wife of the said John M. Pennybacker, is a good deed for the purpose of conveying the interest of John M. Pennybacker in the lands therein mentioned, and the court also instructs the jury that if they find from the evidence that the said Sarah H. G. Pennybacker at the time of the execution and acknowledgement of the said deed was the wife of the said John M. Pennybacker, then the said deed is not valid so far as it purports to be her deed, and does not convey any interest she may have had in said land and cannot operate against her or her grantees by way of estoppel."

The defendant, The Central Land Company of West Virginia, objected to the giving by the court to the jury of the last clause or paragraph of said instruction, it being all that part thereof following the words "the land therein mentioned;" which objection the the court sustained and refused to give to the jury that part of said instruction so objected to, but the court gave to the jury all that part of said instruction not so objected — as asked for by the
300 plaintiff; to which ruling and decision of the court the plaintiff excepts, and these his exceptions No. 5 are saved to him.

And thereupon the case was submitted to the jury, who rendered a verdict for the defendant.

And thereupon the plaintiff moved the court to set aside the said verdict as contrary to the law and the evidence and award him a new trial; which motion the court overruled and refused to set aside the said verdict and award the said plaintiff a new trial; to which ruling and opinion of the court the plaintiff excepts, and these his exceptions No. 6 are saved to him.

And the said plaintiff's exceptions, noted in this bill as numbers 1, 2, 3, and 4, 5, and 6, are all and each of them duly signed and sealed herein and made a part of the record.

IRA J. McGINNIS. [SEAL.]

STATE OF WEST VIRGINIA, *Cabell County,* } *To wit:*

I, T. W. Peyton, clerk of the circuit court of the county aforesaid, do certify that the foregoing is a true transcript of the record and proceedings made and had in the causes of John B. Laidley *vs.* The Central Land Company of West Virginia, in ejectment, and John B. Laidley *vs.* The Central Land Company of West Virginia, in ejectment, consolidated, lately determined in said court, except that only such parts of clause 15 of the bill of exceptions was copied as was requested by plaintiff.

Given under my hand this 10th day of May, 1886.

T. W. PEYTON,
Clerk Cir. Ct. Cabell Co., W. Va.

Fee for record, $47.50.
Printer's fee for record, index, and cover, $95.50.
Record printed December, 1886.

Supreme Court of Appeals of West Virginia, Charleston.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY. } In Chancery.

From the circuit ct. of Summers county.

Judges: Hon. Okey Johnson, Hon. T. C. Green, Hon. A. C. Snyder, Hon. Samuel Woods; O. S. Long, clerk.

Supreme Court of Appeals of West Virginia.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY.

Petition.

To the honorable judges of the supreme court of appeals of West Virginia:

Your petitioners, The Central Land Company of West Vir-
301 ginia, a corporation, respectfully represents that it is aggrieved by a final decree of the circuit court of Summers county, rendered on the 9th day of May, 1888, in a suit in chancery then pending therein, in which your petitioner was plaintiff and John B. Laidley and others were defendants. The material questions involved appear from the following—

Statement of the Case.

On the 25th day of February, 1870, Sarah H. G. Pennybacker, a married woman, being seized in fee of a tract of land of 240 acres, situate in Cabell county and within what is now the city of Huntington, together with her husband, John M. Pennybacker, sold and conveyed the same, with a reservation, however, of a house and lot, described in the deed, to C. P. Huntington for the sum of $11,000 cash, which, by the direction of the said Sarah H. G. Pennybacker, was paid to her husband, the said John M. Pennybacker. Said Huntington took immediate possession of the said tract of land under said deed, and held and occupied the same until the 16th of October, 1871, on which day he sold and conveyed the same by deed to your petitioner, and your petitioner at once took possession of said land under said deed and has held and has occupied the same thereunder ever since, except the parts thereof sold to others, who are holding and claiming under your petitioner, as stated in its bill and amended bill.

A short time prior to January, 1882, the said husband of Mrs. Pennybacker died, and the defendant, John B. Laidley, a practicing lawyer and son of Albert Laidley, the agent through whom Mr. Huntington purchased said land, on the subsequnt day, shortly after the day on which Mr. Pennybacker died, procured from Mrs. Pennybacker a deed of conveyance to himself of the said tract of land so conveyed by herself and husband to Mr. Huntington.

Up to this time Mrs. Pennybacker was perfectly satisfied with the sale and conveyance of the land to Mr. Huntington. The land was a farm simply when she bought it, and the same when she sold it. She bought it in 1865 for $8,000, and sold it in Feb., 1870, for $11,000, reserving one acre, with a valuable brick house thereon. She did not apply to Laidley or to any one else in reference to the matter, but Laidley went to her. In searching the records of deeds in the clerk's office of the county of Cabell he found the deed from Mrs. Pennybacker and her husband to Mr. Huntington, and came to the conclusion that the certificate of acknowledgment of said deed by Mrs. Pennybacker was defective and not sufficient to pass her title to Mr. Huntington and voluntarily went to Mrs. Pennybacker and told her that she still had an interest in the land which she could recover by a suit, and offered to bring and prosecute such suit for her for one-half the amount recovered. She told him she had sold the land to Mr. Huntington and received her pay in full for it; that she had no interest in it and was satisfied with what she had done, and refused to entertain his proposition. Finding that he could not then prevail upon her to
302 bring suit, he left, telling her to consult some of her friends, but not to consult any lawyer, and he would return and see her further in a short time, which he did. At this interview she still refused to bring any suit, and made the same statement to him she had made before. He did not in either of these interviews explain or pretend to explain to her, up to this time, what interest she had in this land, and now when he could not prevail upon her to bring suit, as he desired, he told her that she had a dower interest in the land and proposed to buy it, and finally he succeeded in inducing her to sell to him her alleged dower interest for the sum of $500, of which sum he paid $100 cash and gave his notes for the balance. He then wrote a deed of conveyance from her to himself, not for a dower interest, but for the whole estate, in absolute fee-simple, which she executed believing it to be a deed for her dower. At the date of this deed, January 26th, 1882, this land had been laid out into lots, streets, and alleys, and formed part of the city of Huntington. A large number of these lots had been sold to others, who had built valuable houses and made other valuable improvements thereon. The C. & O. railroad had been built and was in full operation, and had purchased and paid for a considerable portion of this land; and, in fact, the said land and its improvements at the day Laidley obtained this conveyance for $500 was worth from $100,000 to $150,000; and at the time he first approached Mrs. Pennybacker he had full knowledge of the fact that Mr. Huntington had bought and paid for this land and that he and his vendee, your petitioner, and its said vendees had held and possessed the said land continually from the date of Mrs. Pennybacker's said deed to the date of the deed to him. These facts all appear by the evidence in the case found in the record. After Laidley obtained this deed he brought actions of ejectment against your petitioner and others in the circuit court of Cabell county to recover this land, and the one brought against your petitioner was tried and a verdict was found

for your petitioner, the court holding the certificate of the acknowledgment of Mrs. Pennybacker of her said deed was good and sufficient. Laidley appealed to your honorable court from the judgment in the case and the same was reversed, your honorable court holding that said certificate was defective.

Pending the said appeal this suit was brought for the purpose, among others, of preventing Laidley from disposing of the said real estate or any part of it, pending said appeal; and in case it should decide on said appeal that the certificate in question was defective, then to have the deed of Mrs. Pennybacker to Laidley set aside, &c. The original bill was, necessarily, imperfect and incomplete, and after the decision of your honorable court your petitioner filed its amended and supplemental bill. Laidley alone answered these bills. The prayer of your petitioner was and is:

1st. For an injunction restraining Laidley from the prosecution of any and all of his suits in ejectment mentioned in the bills until the decision of this suit.

2nd. That Laidley be held and decreed to be a trustee in equity of the legal title to said land for the use and benefit of your
303 petitioner and its said vendees, and that he be compelled by a proper decree to convey said land to your petitioner and its said vendees.

3rd. But if, in the opinion of the court, this could not be done, that Laidley be decreed to pay your petitioner the said sum of $11,000, with interest thereon from the 25th day of Feb., 1870, till paid, and that the said money and interest and the costs of this suit be made a lien on said land; and

4th. For general relief.

But the court, without passing upon the prayer for the injunction, dismissed the bill and amended and supplemental bill at the costs of your petitioner, and your petitioner assigns as error in said decree the dismissal of said bills—

1st. Under the pleading and evidence in this cause it is clear that the defendant Laidley holds the legal title to the real estate in controversy as a trustee in equity for the use of your petitioner and its said vendees. While he holds the legal title they have the prior equity. They were purchasers in good faith and for full value, while Laidley was a purchaser in fraud of the rights and equities of your *par*titioner and its said vendees for substantially no consideration at all, with full knowledge of all the facts, an- it was error not to declare him to be such trustee and to compel him to convey the legal title to said real estate as prayed for in said bills.

2nd. But if said Laidley is not in equity a trustee, as claimed by your petitioner, he must unquestionably account to your petitioner for the said $11,000 paid by Mr. Huntington for said real estate and the interest and the cost of this suit, and the same should have been decreed to be a lien on said real estate until paid, and the court erred in not so deciding.

And for these and divers other errors apparent on the face of the record, a copy of which is herewith presented, your petitioner prays an appeal from the writ of supersedeas to the said decree in order

that the same may be reviewed. It also asks for an injunction, as prayed for in the original, amended, and supplemental bills, and which were refused by the circuit court of Summers county.

THE CENTRAL LAND COMPANY,
By J. H. FERGUSON AND
SIMMS & ENSLOW, *Att'ys.*

I, F. B. Enslow, an attorney-at-law, practicing in the supreme court of appeals, do certify that in my opinion there is such error in the decree complained of as entitles the plaintiff to an appeal and review of the said decision.

F. B. ENSLOW.

Appeal and supersedeas granted as prayed, to take effect upon giving proper bond, with good personal security, in the penalty of $250, conditioned according to law.

OKEY JOHNSTON,
Judge Supreme Court of Appeals.

To O. S. Long, Esq., clerk, &c.
Aug. 20th, 1888.

304 *Record.*

THE STATE OF WEST VIRGINIA:

Pleas before the circuit court of Summers county, on the 14th day of May, 1888.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA, a Corporation, Pl'ff, *vs.* JOHN B. LAIDLEY ET AL., Def'ts. } In Chancery.

Be it remembered that at the June rules, 1887, of the circuit court of the county of Cabell, in the State of West Virginia, came the plaintiff, by its attorney, and filed its bill in said cause, which is as follows:

Bill.

STATE OF WEST VIRGINIA, *Cabell County,* } *ss:*

In the Circuit Court of said County, June Rules, 1887.

The bill of complaint of The Central Land Company of West Virginia, a corporation, existing and doing business in said State under and by virtue of the laws of said State, plaintiff, against John B. Laidley, C. P. Huntington, Sarah H. G. Pennybacker, The Chesapeake & Ohio Railway Company, The Newport News & Mississippi Valley Company, D. W. Emmons, R. T. Harvey, J. M. Noble, S. F. Jobe, A. L. Williams, Catherine Kneff, S. R. Hall, Michael O'Brien, S. A. Remeley, C. F. Remeley, Clay Greenwell, Margaret Sands, and S. J. Love, defendants. Filed in the circuit court of the said county of Cabell.

The plaintiff complains and says that heretofore, to wit, on the 18th day of August, 1865, one Rebecca J. Everett was seized in fee-simple of a tract of land lying and being in the county of Cabell, on the Ohio river, about three miles below the mouth of the Guyandotte river, and being a part of the Isaac Frampton lands, containing 240 acres, more or less; and being so seized and possessed she, the said Rebecca J. Everett, by deed of the 18th day of August sold and conveyed the said tract of 240 acres to the defendant Sarah H. G. Pennybacker, which deed is of record in the office of the clerk of the county court of Cabell county, in Deed Book —, page —, to which deed reference is hereby made, and a copy will be found in the exhibits herewith filed, marked "A." On the 25th day of February, 1870, the said Sarah H. G. Pennybacker, by deed of that date, sold and conveyed the said tract of 240 acres of land to the defendant C. P. Huntington, in which deed the husband of the said Sarah, J. M. Pennybacker, joined, and the said Huntington paid in cash for said land the sum of $11,000; said deed conveyed all of said land except one acre, all off which will fully appear from a
305 certified copy of the said deed, filed with this bill, marked Exhibit "A 2," and prayed to be read as part hereof; that on the 16th day of October, 1871, the said C. P. Huntington, by deed of that date, sold and conveyed the said tract of land so conveyed to him to this plaintiff; that on the 15th day of April, 1870, Albert Laidley, the father, and his wife, the mother, of the defendant John B. Laidley, by deed duly executed, conveyed all the said Albert Laidley's interest to the said land to the defendant C. P. Huntington, warranting the title generally. The plaintiff now says that immediately after the execution of the deed from Sarah H. G. Pennybacker to C. P. Huntington the said Huntington took actual possession of the said land so conveyed to him and held the same in actual, open, adverse, and exclusive possession, and paid all taxes charged and chargeable thereon until the date of his conveyance to the plaintiff, and on the conveyance to the plaintiff the plaintiff

took and held actual, open, adverse possession and paid all taxes on the same.

The plaintiff now says that the said Huntington, under and by virtue of her deed, held and claimed the said land so conveyed to him from the date of the deed from Sarah H. G. Pennybacker to the date of the deed from Albert Laidley, and from that time till the sale to this plaintift he held and claimed the land under and by virtue of both of the said deeds, and such claim was adverse to all the world; that after the purchase by the said Huntington of the said land the said Huntington agreed to sell to this plaintiff, and in pursuance of that agreement he caused the land to be laid off into town lots, streets, alleys, and avenues, and that immediately upon the execution of the said deed — the said Huntington to this plaintiff this plaintiff took actual, open possession of the said land and held and claimed the same under its deed so executed to it and the deeds so executed to the said Huntington adverse to all the world, and from that date has paid all the taxes charged or chargeable on the said land, except so far as it has sold and conveyed parts and parcels of the said land to others, as hereinafter mentioned. As to the parcels so sold and conveyed, it so held, claimed, and occupied such parts and paid the taxes thereon from the date of the conveyance of the whole tract till the date of the several deeds of conveyance of the several parts and parcels. This plaintiff now says that after it bought the said land it sold and conveyed lots numbers 8 and 9, block number 67, of the city of Huntington, of which the land in question is a part, to S. J. Love, one of the defendants herein, and by deed dated May 23d, 1874, conveyed the same to him; by deed bearing date the 19th of December, 1873, conveyed to the defendant J. M. Noble lots numbers 15 and 16 of block 67; and by deed dated June 22nd, 1874, conveyed lots numbers 8 and 9 to the defendant Catherine Kneff; and by deed dated September 24, 1874, conveyed lot number 12 of block 68 to S. A. Remely, the wife of C. F. Remely, defendants herein; and by deed of the 7th day of May, 1874, conveyed lot number 4, block 68, to Michael O'Brien, defendant, and to John O'Brien, which said lot the defendant Michael now owns, as the plaintiff is informed; and by deed dated the 9th day of October, 1874, conveyed lot seven of block 68 to the
306 defendant Margaret Sands; and by deed dated the 20th day of July, 1875, conveyed lot 10 of block 67 to one S. S. Coe, and said lot is, as this plaintiff is informed, now the property of the defendant J. M. Noble; by deed dated the 26th of June, 1874, conveyed lot 4 of block 67 to one Andrew Griffith, and through the said Griffith the said lot was conveyed to M. B. Ryan, and said Ryan conveyed the same to the defendant R. T. Harvey, who now owns the same, as this plaintiff is informed; and by deed dated the 14th day of August, 1873, conveyed lot 10 of block 68 to one O. G. Chase; said Chase conveyed to James France and E. E. Ward, France to E. E. Ward, E. E. Ward and wife to D. M. Magann, and Magann and wife conveyed to the defendant Clay Greenwell, who now owns the same; and by deed dated the — day of ——, 18—, conveyed lots 13 and 14 of block 68 to Wayne Furgeson and H.

Middeke; and lot 14 was by Special Commissioner Ira J. McGinnis conveyed to the defendant A. L. Williams, — now owns the same, and lot 13 was by Wayne Ferguson conveyed to the defendant S. R. Hall, who now owns the same; and by deed dated September 1st, 1873, conveyed two certain parts of the tract in question to the Chesapeake & Ohio Railroad Company, one of the said strips being that used — a right of way for the track of the railroad across the land between 7th and 8th avenues, and the other the river front of said tract, on which the tracks of the defendant The Chesapeake & Ohio Railway Company are; and the Chesapeake & Ohio Railroad Company, having had a decree of sale of its property, rights, privileges, and franchises rendered against it by the circuit court of Kanawha county, West Virginia, and its real estate and property sold, and by a deed of a special commissioner, duly and legally appointed and qualified, conveyed to the defendant The Chesapeake & Ohio Railway Co., which company now owns and is in possession of the said parts so conveyed to it and on which are the tracks of the said railroad, which railroad is, as the plaintiff is informed, now in the actual possession of the defendant The Newport News & Mississippi Valley Company as lessee, and by deed dated the — conveyed the lot 11 of block 67 to the defendant S. F. Jobe, who is now the owner of the same and in possession of it.

All of which said several matters and things will fully and at large appear from the bill and the exhibits filed therewith in the chancery case of the defendants D. W. Emmons, R. T. Harvey, J. M. Noble, S. F. Jobe, A. L. Williams, Catherine Kneff, S. R. Hall, M. O'Brien, S. A. Remeley, C. F. Remeley, C. Greenwell, M. Sands, S. J. Love, The Chesapeake & Ohio Railway Company, and The Newport News & Mississippi Valley Company, as plaintiffs, against John B. Laidley, C. P. Huntington, this plaintiff, and Sarah H. G. Pennybacker, as defendants, in the circuit court of Cabell county, which said bill and exhibits and each of them are hereby made a part of this bill and prayed to be taken and considered as a part hereof the same as if the said bill with its exhibits was copied at length herein.

This plaintiff now says that the land which it has not sold, as herein set out, is owned by it in fee-simple, and that it has
307 possession of the same actually, openly, and adverse to all persons whatsoever, and that it owns and claims the same and has owned, held, and claimed the same ever since its deed from the said C. P. Huntington as aforesaid, and has paid all taxes charged on the same or that are properly chargeable on it except those parcels sold as aforesaid, and as to those parcels this plaintiff and the defendants who now own the said parcels as aforesaid and those under whom they claim have at all times since the said several parcels were sold to them been in actual, open, and adverse possession of the same, and that this plaintiff and those defendants now own, hold, and claim the whole of the said land in question, and they so held and had actual possession of the same ever since the same was conveyed to the said Huntington, and they so claim and hold the same by virtue of the deeds to them and to Huntington, as

hereinbefore set out. The plaintiff now says that on the 26th day of January, 1882, the said land being then in the actual possession of the grantees aforesaid, and after the death of J. M. Pennybacker, the husband of the said H. G. Pennybacker, the said defendant John B. Laidley, having full and complete knowledge of the facts and notice of the sale and conveyance of the said tract by the said Sarah H. G. Pennybacker and her husband to the said Huntington, and of his sale and conveyance to this plaintiff, and of the sales by this plaintiff to others of parts of the said tracts, and of the claim of this plaintiff to and of its possession of the land and of the possession of those claiming under this plaintiff, and of the fact that the said parties claiming the said land had bought and paid for it and erected and put valuable improvements on the same, procured from the said Sarah H. G. Pennybacker a deed of conveyance conveying the said tract of 240 acres, less the said reservation of one acre to him, in consideration of the sum of $500 to be paid to her by the said Laidley. A copy of the said deed is filed herewith as a part of the bill, marked Exhibit "B 2."

The plaintiff says that in order to procure the said deed the said J. B. Laidley, who was and is a practicing attorney in the courts of West Virginia, at his own instance and of his own motion and motive, went to the said Sarah Pennybacker and endeavored to induce her to commence a suit against the then owners of the said tract of land for the recovery of the same, informing her that she had an interest in or claim to the same, and offered to prosecute the suit for one-half of whatever he might recover for her therein, which offer she refused, and refused to bring a suit, and at the same time she told said Laidley that she and her husband had sold and conveyed the said land to the defendant C. P. Huntington for the sum of $11,000, which sum she had received as purchase-money therefor, and that she had made no claim to the land; upon which the said Laidley then left her, telling her to consult some of her friends, and that he would call again in a few days for her answer, and in a few days did return, and at this second interview she positively refused to bring any suit as the said Laidley suggested, and she repeated to him that she had sold the land to Huntington and received her money for it, and that she neither had nor made any
308 claim to it. In this last interview the said Laidley told her that her interest was a dower interest, and he asked her if she would sell and convey her interest in the said land to him, and in reply to a question by her as to what he would give he offered her $500, which she accepted, and he, the said Laidley, then paid her $100 and gave her his note for $400, the balance of the purchase-money, upon which he afterwards made a small payment, and in order to realize anything further from the said note she was compelled to sell it at a discount. All the realized out of the said sale was $325. This plaintiff also says that in July, 1872, the said Sarah H. G. Pennybacker commenced a suit in chancery against John M. Pennybacker, her husband, and others, a complete record of which suit is found on pages 90 to 105 of the printed record of the suit of John B. Laidley against the Central Land Company, in

ejectment, now pending in the supreme court of the State of West Virginia, a copy of which record is filed with the suit of D. W. Emmons and others against John B. Laidley and others, in the circuit court of Cabell county, heretofore referred to and made a part of this bill. By reference to the bill of complaint on pages 91, 92, and 93 of said record it will be seen that the said Mrs. Pennybacker sets up her sale and conveyance of the tract of land in question to C. P. Huntington on the payment to her of the purchase-money therefore, and claims the same as her separate property, and her right thereto, as claimed in her bill, was maintained by judgment and decree of said court in said cause, whereby the said tract of land in question in this suit was held to be the separate property of the said Mrs. Pennybacker. The said Sarah H. G. Pennybacker, on the 20th day of February, 1874, by deed of that date, joined in by her husband, and duly acknowledged by her, conveyed the reservation reserved in her deed to C. P. Huntington to one Warren J. Parsons, a copy of which deed is found in said printed record, on page 89, and by reference to said copy — said deed it will be seen that she therein recognizes her deed of conveyance of the land in question to said Huntington.

And the plaintiff further says that under and by virtue of the several deeds of conveyance, hereinbefore referred to, of its said claim, possession, and occupancy of the said real estate conveyed by the said deed and of the decree and proceeding of the circuit court of Cabell county in the chancery suit of S. H. G. Pennybacker against John M. Pennybacker and others, as aforesaid, and the knowledge of John B. Laidley of all the facts, as hereinbefore stated, the title of this plaintiff to the portion of the said tract owned by it as hereinbefore stated was, at the date of the conveyance of the said tract of land by the said Sarah H. G. Pennybacker to the said John B. Laidley, valid, perfect, and complete both in law and in equity, as they are advised and believe and so charge, and that, therefore, no right, title, or interest in or to said tract of land or any part thereof passed to said Laidley under and by virtue of said deed from S. H. G. Pennybacker, but that the same is simply a cloud upon this plaintiff's title to the property owned by it, which cloud should be removed and its title to said land quieted by
309 a decree of this court; and the plaintiff further avers and charges that at the time of the conveyance from Mrs. Pennybacker to said Laidley of said land that the same was, by reason of this plaintiff and its grantees having expended large sums of money upon the said land and upon lands adjoining in building the city of Huntington, worth a great deal more than it was at the time of its purchase by C. P. Huntington, and was worth at the time that said Laidley procured the deed to himself at least $30,000.

The plaintiff further says and charges that the said deed from the said S. H. G. Pennybacker to John B. Laidley was procured by him by misrepresentation and fraud, and that the consideration which he was to pay therefor was wholly inadequate, and that such deed was not in fact such a deed as Mrs. Pennybacker intended to make and as she was induced by said Laidley to believe that she

had a right to make, which was simply a conveyance of her alleged dower interest in said tract of land. The plaintiff alleges and charges that the said Laidley, as it is informed and believes, misrepresented the facts in the case to Mrs. Pennybacker by telling her that she had a dower interest in said land as widow of J. M. Pennybacker, and that he fraudulently concealed from her the fact that her title, if any she had, was a fee-simple title and not a dower interest, and that the said purchase was made by the said Laidley with the intention on his part of instituting a suit against the true owners of said land when he well knew that the said Mrs. Pennybacker made no claim to the said land and had refused to bring any suit for the same whatsoever. The plaintiff *only* further says that at the date of the said conveyance by the said Mrs. Pennybacker to John B. Laidley she had used and disposed of the proceeds of the property so sold by her to Huntington and was then insolvent and unable to make good any warranty that she might have made in her deed to said Huntington, and that the estate of J. M. Pennybacker, her husband, was also insolvent and not responsible on his warranty in said deed. The plaintiff says that the said Mrs. Pennybacker, having used and disposed of the proceeds of the property by her to Huntington, could not in her own right in equity set up her claim on account of the defective execution of her deed to Huntington, but that she would in equity be estopped from asserting any claim to said lands, and the said Laidley, being a purchaser with full notice of all the facts, is also estopped from asserting a claim to said land, which this plaintiff alleges he bought with the intention of defrauding this plaintiff and its grantees out of property which justly and legally belongs to them.

And this plaintiff further avers and says *that even that* is mistaken it is informed and believes and so charges that *in* the deed of Sarah H. G. Pennybacker and husband to said Huntington was insufficient to convey to the said Huntington an estate in fee-simple in said land sought to be so conveyed by reason of the defect in the certificate of acknowledgment thereof by said Mrs. Pennybacker, as is alleged by the defendant, John B. Laidley, and upon which defect he bases his claim to said tract of land, that then, by reason
310 of the facts, conveyances, and allegations hereinbefore made and referred to, this plaintiff and the defendants claiming under it, dating back to the deed of Mrs. Pennybacker and husband to Huntington, had and now have a superior equity in and to the said land so conveyed by the said deed and other conveyances herein named to the said Laidley at the date of his deed therefor from Mrs. Pennybacker, and that the effect of said deed was and is to convey only the legal title to said land, and that he holds the same in equity only as a trustee for the use and benefit of this plaintiff and of the defendant herein, who hold and claim the said land under the deed from Mrs. Pennybacker and husband to Huntington.

And this plaintiff further complains and says that on the — day of ——, 18—, the said John B. Laidley commenced separate actions of ejectment in the circuit court of Cabell county, West Virginia,

against the plaintiff and the defendants herein who hold part of the property, as hereinbefore mentioned, for the recovery of the said parts and parcels of the said tract of land in question conveyed to them by the several and respective deeds hereinbefore referred to and made part of this bill. The action of ejectment against this plaintiff brought by said Laidley is now pending in the supreme court of appeals of this State upon a writ of error on the petition of the said John B. Laidley, and the same is set down for hearing and argument upon the 17th day of June, 1887, in which suit, as appears from the printed record thereof, hereinbefore referred to, the question as to the validity and sufficiency of the certificate of acknowledgment of the deed of Sarah H. G. Pennybacker and husband to C. P. Huntington is to be decided, and that the decision of that case will determine the question as to the sufficiency of the acknowledgement and as to the validity and the effect of the deed to the said land in question, now claimed by this plaintiff and its grantees. This plaintiff further says that the said Laidley's action in ejectment against the Newport News & Mississippi Valley Company is pending in the circuit court of Cabell county, West Virginia, and that the other action- brought against the owners and claimants of portions of the land in question have been removed from the circuit court of Cabell county to the circuit court of Summers county, and are now pending therein. Copies of each of the said declarations in ejectment and the notice, sheriff's return of service, and the certificate of the filing of the same, are filed with the bill in the suit of Emmons and others against Laidley and others, hereinbefore referred to as exhibits, and the said exhibits and the bill in said case being filed with this bill, are prayed to be taken as a part hereof. And this plaintiff further says that it is advised and believes and so avers and charges that if the legal title to the said land so held by them, as aforesaid, passed to said Laidley by the deed from the said S. H. G. Pennybacker to him, they are entitled to a decree in this cause compelling said Laidley to convey to it and its grantees the legal title to the portions of the land owned by this plaintiff and so conveyed by the plaintiff to the defendants, as hereinbefore set out, which said title he holds in equity as trustee for the benefit of this plaintiff and its grantee-, as hereinbefore stated;

311 and therefore, in consideration of the premises, and inasmuch as this plaintiff is without adequate remedy or defence at law against the said action of ejectment in case the supreme court of appeals should hold that the certificate of acknowledgement of said Sarah H. G. Pennybacker to her deed of conveyance of said land to C. P. Huntington, dated February 25th, 1870, was and is defective and not sufficient to make said deed a valid conveyance of her estate in fee-simple in said land to said Huntington, the plaintiff prays that the defendant, John B. Laidley, by compelled by a proper decree to be made herein to convey to this plaintiff and its grantees and those claiming under them respectively by deed of special warranty the portion of said real estate so held and claimed by them under their several deeds, as hereinbefore mentioned; but if the supreme court should be of the opinion and it should be so

held by this and by the said supreme court that the legal title of this plaintiff and its grantees and those claiming under it to the parts and parcels of the land so held and claimed by them was good and valid at the date of the deed from S. H. G. Pennybacker to John B. Laidley, dated the 26th day of January, 1882, then it prays that the said deed to Laidley be decreed to be and be set aside as a cloud upon the title to the land in question held by this plaintiff and those claiming under it. If, however, this court should be of the opinion that this plaintiff is not entitled in either form as above prayed, then it prays that the said sum of $11,000 paid by the said C. P. Huntington to the said Sarah H. G. Pennybacker as purchase-money of the said land as heretofore set out, with interest thereon from February 25th, 1870, the date of his deed therefor, to the date of the decree of the circuit court of Cabell county herein, *to* be declared and decreed a lien upon said tract of land and every part of it, and that the said tract of land be by a proper decree of this court held subject to the payment of the said sum, and that the same enure and pass to this plaintiff for its use and benefit as the grantee of C. P. Huntington, the original purchaser of the said land, so that this plaintiff may be to that extent protected in its claim and rights as grantee of the said land; and this plaintiff also prays that the defendant, John B. Laidley, may be enjoined and restrained from the prosecution of each, every, and all of the said actions of ejectment against this plaintiff's grantees and tenants, and to whom it as grantor on its warranty might be held to answer, until the matters and things herein set forth can be heard and determined in equity.

This plaintiff also prays that all such other further specific and general relief may be granted it as in the premises may to the court seem fit and as — equity it may be entitled —; and, in duty bound, it will ever pray.

THE CENTRAL LAND COMPANY
OF WEST VIRGINIA, *Plaintiff*,
By COUNSEL.

J. H. FERGUSSON, SIMMS & ENSLOW, *Sol's.*

312 STATE OF WEST VIRGINIA, }
Cabell County, } *ss*:

D. W. Emmons, one of the defendants herein and the agent and general superintendent of the plaintiff, being first duly sworn, says that he is acquainted with the facts and allegations therein contained, and that the same so far as stated therein to be upon the knowledge of the plaintiff are true, and where stated upon information and belief of the plaintiff he believes them to be true.

D. W. EMMONS.

Taken, sworn to, and subscribed before me, F. B. Enslow, a notary public in and for the county of Cabell, State aforesaid, this 8th day of June, 1887.

B. F. ENSLOW, *N. P.*

The following is the separate answer of John B. Laidley, filed at July rules, 1887, which is as follows:

The separate answer of John B. Laidley to the bill of complaint filed by the Central Land Company of West Virginia, a corporation, against him and others in the circuit court of Cabell county.

The defendant says it is true that Rebecca J. Everett, on the 18th day of August, 1865, by deed of that date, conveyed to S. H. G. Pennybacker the tract of land in the bill mentioned, a copy of which deed is exhibited with the plaintiff's bill, marked "A," and is asked to be read as a part of this answer. The defendant says at the date of the execution of said deed the said S. H. G. Pennybacker was a married woman, the wife of John M. Pennybacker, and living with him in the county of Cabell, in the State of West Virginia. The said land is situate in said county. The said deed vested a life estate in said land in said John M. Pennybacker, by virtue of his marital right, and a remainder in fee in said Sarah, his wife. The said John M. Pennybacker took possession of said land and enjoyed the rents and profits until the 25th day of Feb., 1870. He then sold his said life estate to C. P. Huntington and put him in possession under a deed of that date and received from him $11,000.00, as defendant is informed. Defendant denies that Sarah H. G. Pennybacker, on the day and year last aforesaid or at any other time, sold her estate in said land to C. P. Huntington, and denies that he ever conveyed her said estate to said C. P. Huntington, and denies that she joined in the execution of the deed last aforesaid of John M. Pennybacker to C. P. Huntington, and defendant says that the said Sarah did not receive any of the said sum of $11,000.00 from the said Huntington. On the contrary, he says that John M. Pennybacker received the whole of said sum and used it for *for* his own benefit and squandered it and did not pay any of it to his said wife, Sarah H. G. Pennybacker. Defendant denies that C. P. Huntington, on the 16th day of October, 1871, conveyed the said land to the plaintiff. On the contrary, the said Huntington only conveyed to the plaintiff by the deed mentioned in the bill his, said
313 Huntington's, interest in said land, to wit, the said life estate of John M. Pennybacker.

Defendant says that Albert Laidley never had, by purchase or otherwise, any right, title, or interest in the estate of S. H. G. Pennybecker in said land; that, on the contrary, he contracted in writing with John M. Pennybecker for the purchase of said land, and the said deed of John M. Penny- to C. P. Huntington, dated the 25th day of Feb., 1870, was executed by him at the request of said Laidley and in consequence of his said contract in writing, but he, the said Albert Laidley, by his said contract only acquired a right in equity to the life estate aforesaid of said John M. Pennybecker, and that equity was all he, said Laidley, by the deed mentioned in the bill dated April 15th, 1870, — to said Huntington. The said Huntington, by his deed on 16 Oct., 1871, conveyed to the plaintiff only his interest in said land so acquired from Albert Laidley, and conveyed with special warranty only, so that plaintiff

took said deed with ample warning and without recourse on said Huntington.

Defendant says that John M. Pennybecker departed this life on the 5th day of May, 1881; whereupon the said Sarah became entitled to the possession of the said land. The defendant says it was the duty of those holding the life interest of said John M. Pennybecker to enter the said land on the land books of Cabell county and pay the taxes thereon (see West Virginia Code, 1868, chapter 29, sec. 40); and he says the possession of John M. Pennybacker and his grantees aforesaid was not adverse to the title of Sarah H. G. Pennybacker, and the payment of taxes by them was for her benefit as well as their own.

Defendant says that the said interest of said Sarah in said land was not what is termed her sole and separate estate; and the statute of West Virginia does not limit her right of action to ten years from the time it occurred for the recovery of the same, but to twenty-one years, or five years after removal of disability; and the possession aforesaid of plaintiff, its grantees and those claiming under John M. Pennybecker, if it were adverse to her, was not continued for twenty-one years, and was not continued for a period that would bar her right of action, and no adversary possession can bar her title unless it is such as would bar her right of action. Defendant says that after the death of said John M. Pennybacker he purchased from Mrs. Sarah H. G. Pennybacker the land mentioned in the bill, and she conveyed the same to him by deed dated the 26th day of January, 1882, which was duly recorded in the county court clerk's office of Cabell county, a copy of which is exhibited with the plaintiff's bill, marked "B 2," and is asked to be read as part of this answer; that he entered said land on the land books of said county in the year 1883 in his own name, and has paid all taxes charged and chargeable thereon from 1882 to this time. Defendant says that at the time of his said purchase he had no actual knowledge of the matters and things alleged in the plaintiff's bill any further than he could and did derive from an examination of the
314 records of the county court clerk's office of Cabell county. He says it is not true that at the time he purchased said land from Mrs. Pennybecker he made false and fraudulent representations to her about her title, estate in, interest in, said land mentioned in the bill. On the contrary, he informed her of the defect in the deed to Huntington rendering it void as to her. It is not true that he concealed from her the nature and extent of her rights and interests in said property.

He informed her that the said deed was void as to her and that she had the right to recover the fee-simple therein, all of which she fully understood. He did not tell her that she had a dower interest only therein, and she did not understand that she was only selling a dower interest. On the contrary, she consulted her friends and business advisers as to whether she would sell or bring suit, and concluded to sell the land to the plaintiff on the grounds that she would rather have a sum certain than the risk of a lawsuit; and defendant says that the consideration under the circumstances was

not inadequate, and she did not say to the plaintiff that she had and made no claim to said land, and did not decline to bring suit for the recovery of said land.

Defendant says that the matters in the bill and decree in the suit brought by Mrs. Pennybacker against her husband and his creditors in 1872 for the recovery of certain property is wholly immaterial to the issues in this suit for any purpose whatever and is no estoppel and not even evidence between the parties to this suit. It is not true that no right, title, or interest passed to defendant by Mrs. Pennybecker's deed to him aforesaid. On the contrary, he acquired thereby a good and perfect title to said land in law and equity, and she fully understood the nature of said deed, and fully understood that she was selling this defendant the fee-simple and not a dower interest in said land.

Defendant says that Mrs. Pennybecker did not receive or enjoy the said $11,000, but the same was squandered by her husband; and he says that neither she nor this defendant are estopped by said void deed or by any warranty therein or by any act or word of hers in relation to said land from asserting title thereto. It is not true that this defendant bought said land with intent to defraud the plaintiff or its grantees out of said land. It is not true that the plaintiff has a superior equity to this defendant in said land. It is not true that this defendant holds as trustee for the benefit and use of the plaintiff and its grantees and that the plaintiff can compel defendant to convey his said title to it.

Defendant says that the plaintiff has no equity to charge the $11,000 paid by C. P. Huntington to John M. Pennybecker for said land upon the said land as a lien.

He says said Huntington and his grantees, the plaintiff and others, its grantees, have enjoyed the life estate of said John M. Pennybecker in said land; that said estate was all they bought, and that having determined they have no right to recover against Mrs. Pennybecker or her grantee, this defendant, the amount of the consideration paid by C. P. Huntington to John M. Pennybecker for his estate.

315 Defendant says the said estate was worth $11,000, and if said land is liable to be charged with the original consideration it should be offset with the value of said life estate. He says the rental value of said land is at least $1,000 per annum, and that the plaintiff must be charged with the rental value thereof for 17 years, if it has an equity to be repaid $11,000, which Huntington paid for said land. Defendant says that Mrs. Pennybecker is not liable personally in law or equity or morally for the $11,000 her husband received and squandered, and that her land in the hands of her grantee is not liable at law or in equity to be charged with said fund.

And defendant says that plaintiff by its bill has not shown itself entitled to any relief, and demurs to said bill as insufficient in law.

Therefore this defendant prays that the plaintiff's bill may be dismissed, and for her costs; but, if the court shall hold the same sufficient in equity and should charge the $11,000 on said land, he

prays that the same may be offset by the value of John M. Pennybecker's life estate; that defendant recover the rental value of said lands since his, Pennybecker's, death, and for such general relief as the nature of his case may require; and will ever pray, &c.

J. B. LAIDLEY.

STATE OF WEST VIRGINIA, *County of Kanawha,* } *ss:*

John B. Laidley, defendant named in the foregoing answer, being sworn, said the facts and allegations therein contained so far as positively stated are true, and so far as stated to be on information he believes them to be true.

JOHN B. LAIDLEY.

Taken, sworn to, and subscribed before me this 6th July, 1887.

BENJ. BROWN,
Notary Public.

The following is the amended and supplemental bill of complaint filed on the 21st day of March, 1888, and is in words and figures following, to wit:

Amend. Bill.

The amended and supplemental bill of complaint of The Central Land Company of West Virginia, a corporation created by and organized and doing business under the laws of the State of West Virginia, plaintiff, against John B. Laidley, C. P. Huntington, Sarah H. G. Pennybecker, The Chesapeake & Ohio Railway Company, The Newport News and Mississippi Valley Company, D. W. Emmons, R. T. Harvey, J. M. Noble, S. F. Jobe, A. L. Williams, Catherine Kneff, S. R. Hall, Michael O'Brien, S. A. Remley, Clay Greenwell, Margaret Sands, and S. J. Love, defendants, filed in the circuit court of the county of Summers, to which this suit has been removed for hearing by the circuit court of Cabell county.

316 The above-named plaintiff by this its amended and supplemental bill, complains and says that on the 18th day of August, 1865, one Rebecca J. Everett, being seized and possessed in fee-simple of a tract of land situate in Cabell county, West Virginia, below the town of Guyandotte, and on the Ohio river, containing 240 acres, more or less, by deed bearing date on that day, sold and conveyed the said tract of land to the defendant Sarah H. G. Pennybacker, the wife of John M. Pennybecker, for and in consideration of the sum of eight thousand dollars paid to her by the grantee in said deed, and that it was intended by the said deed to convey the same to her as her sole and separate estate, the purchase-money of said land being furnished her by her father for that purpose.

A copy of said deed is found in the printed record, filed with the original bill of this plaintiff in this suit as Exhibit "A," on pages

37 and 38 thereof, and said copy of said deed is here referred to and made part of this bill and prayed to be taken and read as such; that some time prior to the year 1870 the defendant C. P. Huntington and Albert Laidley, the father of the defendant John B. Laidley, entered into an agreement, the substance of which was that said Laidley should, as agent, as far as possible purchase the lands within the limits of what is now the city of Huntington, in Cabell county, West Virginia, from the owners thereof at prices not exceeding certain sums per acre, and that the said C. P. Huntington should and would become the purchaser of all the said land from said Laidley at prices per acre agreed on, largely in advance of the prices per acre at which said Laidley afterwards purchased the said lands, which advance was said agent's commission or compensation; that in pursuance of said agreement the said Laidley as agent purchased a large number of tracts of land within the limits aforesaid, and among them the tract of 240 acres so owned by the said defendant Sarah H. G. Pennybecker at the price of eleven thousand dollars ($11,000) for her *in*tire interest therein as well as that of her husband, whatever it might be, and by the direction of the said Laidley the said C. P. Huntington paid the purchase-money thereof, to wit, the said sum of $11,000, and the said Sarah H. G. Pennybacker and her husband conveyed the said tract of land, less one acre, on which a brick house was erected, to the said C. P. Huntington, with covenants of general warranty, by deed bearing date the 25th day of February, 1870, as will appear by reference to a copy of said deed found on pages 40, 41, 42 of said printed record, Exhibit "A," filed with the said original bill herein, which copy is here referred to and made part of this bill and prayed to be taken and read as such.

That said Albert Laidley, having purchased the said tract of land as aforesaid, also conveyed the same with other tracts to the said C. P. Huntington by deed bearing date the 13th day of April, 1870; it appears by a copy of said deed set out in said printed record, Exhibit "A," filed with the said original bill, on page 88, but which deed commences on page 86 of said record.

The said copy of said deed is here referred to and made part of this bill and prayed to be taken and read as such. This
317 plaintiff has learned that the said defendant John B. Laidley now falsely *and* pretends that the said purchase made by his father, Albert Laidley, was only of the life estate of the said John M. Pennybacker in the said lands and not of the fee therein, and that the said deed of the said Sarah H. G. Pennybacker and her said husband to the said C. P. Huntington therefor was only intended to convey to him the said life estate; but this plaintiff is informed and believes and so avers and charges that the said claim of said defendant Laidley is untrue in every particular, and that the said sale of the said tract of land by Mrs. Pennybacker to the said Albert Laidley and the conveyance thereof by herself and husband to the said C. P. Huntington was and was intended and understood by all the parties to be a sale and conveyance of all the right, title, and

interest of the said Sarah H. G. Pennybacker and her said husband, whatever it might be, in the said tract of land.

And this plaintiff here avers and charges that at the date of the said sale and conveyance of said tract of land the said sum of $11,000 was a full and ample price therefore for the entire estate of Mrs. Pennybacker and her said husband therein, it being at that time simply a country farm and there being then no town or city in the locality; and this plaintiff further avers and says on information and belief that the said $11,000, the purchase-money of the said tract of land, was paid into the hands of the husband of the said Sarah H. G. Pennybacker by her direction and consent; that on the 16th day of October, 1871, the said C. P. Huntington sold and conveyed, by deed, the said tract of land, among others, to this plaintiff, as appears by the seventh clause of the said deed, a copy of which is found in said printed record, filed with the original bill as Exhibit "A," on pages 48 and 49 of said record, which deed, and especially clause seven thereof, is hereof *is here* referred to and made part of this bill and prayed to be taken and read as such; that the said C. P. Huntington took possession of the said tract of land at once under his deed and held and occupied the same until the date of his said deed to this plaintiff, and that this plaintiff, upon the execution of said deed to it, took possession at once of the said tract of land under said deed, and still holds and occupies the same under said deed except as to such parts of said land as *has* since been sold by it to others, as hereinafter mentioned; and this plaintiff, further complaining, says that while the said C. P. Huntington was the owner of said tract of land he caused a large portion thereof, together with other lands owned by him and conveyed by the same deed last referred to to this plaintiff, to be laid off into lots, avenues, streets, and alleys, and when this plaintiff became the owner thereof as aforesaid it sold and conveyed to others several of the said lots, as follows:

To the defendant S. J. Love, lots 8 and 9, in block 67, now in the city of Huntington, which lots are still owned by said Love.

To the defendant J. M. Noble, lots 15 and 16, in block 67, in said city, which are still owned by him.

To the defendant Catherine Kneff, lots 8 and 9, in block 68, in said city, which are still owned by her.

318 To the defendant Susan A. Remley, lot 12, in block 68, in said city, which is still owned by her.

To the defendant Michael O'Brien and to John O'Brien, lot 4, in block 68, in said city, but which is now owned by the defendant Michael O'Brien alone.

To the defendant Margaret Sands, lot 7, in block 68, in said city, which is still owned by her.

To S. S. Coe, lot 10, in block 67, in said city. The said Coe afterwards died, and the said lot was sold at a judicial sale and purchased by the defendant J. M. Noble, who is now the owner of the same.

To Andrew Griffith, lot 4, in block 67, in said city. Said lot, by

a regular chain of conveyances, is now the property of the defendant R. T. Harvey.

To O. G. Chase, lot 10, in block 68, in said city, which said lot is now owned by the defendant H. C. Greenwell under a regular chain of conveyances from said Chase to him.

To the defendant S. F. Jobe, lot 11, in block 67, in said city, who now owns the same.

To the defendant D. W. Emmons, lot —, in block 67, in said city, who now owns the same.

To Wayne Ferguson and ——, lots 13 and 14, in block 68, in said city. Said lot 13 was conveyed by said Wayne Ferguson to the defendant S. R. Hall, who now owns the same, and said lot 14 is owned by the defendant A. L. Williams under a deed of conveyance from Ira J. McGinniss, special commissioner, duly appointed by the circuit court of Cabell county to make said deed. Duly certified copies of all of said deeds are filed as exhibits with the bill of D. W. Emmons and others *vs.* the defendant, John B. Laidley, and others, pending in this court.

And the said bill and exhibits are here referred to and made parts of this bill and prayed to be taken and read as such.

That on the 1st day of September, 1873, this plaintiff sold and conveyed to the Chesapeake & Ohio Railway Company two pieces and parcels of said tract of land for the use of its railroad, one of which is situate in said city, between the 7th and 8th avenues, and the other on the Ohio river, where the railroad tracks and other structures of said company are situate, which said pieces and parcels of land and railroad tracts and structures are now the property of the defendant The Chesapeake & Ohio Railway Company and in its possession and control, except that the parts thereof on which — its railroad tracks and buildings and storehouses used in connection with the operation of its railroad were at the commencement of this suit being used and occupied by its lessee, the defendant The Newport News and Mississippi Valley Company; and the plaintiff, further complaining, says that some time after the date of said conveyance of the lands in question by said Pennybacker and wife to said C. P. Huntington and after his conveyance thereof to this plaintiff the said John M. Pennybacker, the husband of the defendant Sarah H. G. Pennybacker, died, leaving his said wife surviving him, and that thereafter, on the 26th day of January, 1882,

319 the defendant John B. Laidley fraudulently, with notice of the facts hereinafter mentioned and for the purpose of cheating and defrauding this plaintiff and its said vendees out of the said land in question herein, as this plaintiff is informed and believes, procured from the said Sarah H. G. Pennybacker a deed of conveyance to him for the same tract of land which she and her said husband had previously conveyed to the said C. P. Huntington, as hereinbefore stated. A copy of said deed is found on page 39 of the printed record, filed as Exhibit "A" with the original bill in this suit, and the same is here referred to and made a part of this bill and prayed to be taken and read as such; that the defendant Laidley at and before the date of the said last-named deed was a

practicing attorney in the courts of the said county of Cabell, and as such had full access to the records of said county, and that, as this plaintiff is informed and believes and charges to be true, the said Laidley, after the death of his father, the said Albert Laidley, made a thorough search of the records of the office of the clerk of the county court of Cabell county for the purpose of finding out whatever defects, if any, there might be in the conveyances made by his father to the said C. P. Huntington, and in those made by his direction to said Huntington, and in this search he learned, as he supposed, that the certificate of acknowledgement of the said Sarah H. G. Pennybacker of the said deed to said C. P. Huntington was defective and not sufficient to convey to him her title to the land embraced therein, and he thereupon conceived the idea of earning a large fee by inducing the said Sarah H. G. Pennybacker to commence and prosecute actions of ejectment against this plaintiff and its vendees for the recovery of the said tract of land while she was wholly ignorant of any defect in said acknowledgement and was perfectly satisfied with the sale — conveyance of said land to Mr. Huntington by herself and husband, and that thereupon the said Laidley, of his own motion, went to the said S. H. G. Pennybacker and told her, in substance, that she had an interest in said land which she could recover by suit, and if she would employ him to bring such suit he would *he would* prosecute the same as her attorney for one-half of whatever might be recovered therein, and that she told him in reply she had sold the land to Mr. Huntington for $11,000.00 and received her pay for it and had no interest in it nor claim to it and would not bring any such suit; that said Laidley for some time persisted in persuading her to allow him to bring such suit upon the terms named above and she persisted in her refusal to do so, and finally he left, after telling her to consult some of her friends in relation to the matter, but not to consult any lawyer in regard to it, and he would return in a few days and see her further on the subject.

That, as this plaintiff is further informed and believes and so charges, the said John B. Laidley did call upon the said Sarah H. G. Pennybecker a short time afterwards and enquired of her what conclusion she had come to in regard to bringing the said suit, and was informed by her that she would not bring any such suit and repeated to him the facts above stated as to her sale to Mr. Huntington and his payment of the purchase money therefor, and that she had no interest in a claim to the land and was entirely satisfied with her sale and conveyance thereof to Mr. Huntington; that defendant Laidley, finding it impossible to induce the said S. H. G. Pennybacker to bring any suit to recover the said tract, changed his tactics and proposed that she should sell and convey her interest therein to him and asked her to name a price she would take for it, which proposition she declined, telling him at the same time, in substance, that she had nothing to sell and that her son was in the service of the C. & O. R'y Co., and if she was to do as he desired her son would, in all probability, lose his place; but the said Laidley was not to be put off in this way, and, to meet

this difficulty, he assured her that in case her son lost his place in the service of said company by reason of her sale and conveyance to him of her interest in said land he would procure employment for him elsewhere at wages at least equal to what he was then receiving from said company, and finally, by his persistent persuasions and by his assurance given to her as aforesaid and without informing her of the true state of her title in and to the said tract of land in case the certificate of her acknowledgement of the deed to C. P. Huntington therefor should be held insufficient to convey to him her title to said land, he succeeded in procuring from her the deed to himself hereinbefore mentioned for the insignificant sum of $500.00, one hundred dollars of which he paid her cash and gave her his note for $400.00 for the residue, which sum, except a few dollars afterwards paid by him, she could never collect from him, and to realize anything from said note she was forced to sell at a heavy discount, and the fact is, as this plaintiff is further informed and believes, all she ever realized from said sale and conveyance was $325.00, while at the date of the said conveyance of the said tract of land to said Laidley the same was worth from $30,000.00 to $50,000.00; and this plaintiff, further complaining, on its information and belief avers and says and charges as true that the defendant Laidley, long before and at the time he procured the said deed from the defendant S. H. G. Pennybacker as hereinbefore stated, had full and complete notice of the sale and conveyance of the said tract of land by said S. H. G. Pennybacker, and her said husband to the said C. P. Huntington and of the payment of the said $11,000.00, the purchase-money thereof, to said grantors in his deed by Mr. Huntington as aforesaid, and of the sale and conveyance of said tract of land by said C. P. Huntington to this plaintiff, and of the sales and conveyances of the parts thereof hereinbefore stated by this plaintiff to its vendees hereinbefore named, and of the fact that this plaintiff and its said vendees were and for a long time had been in the actual and peaceable possession of the said tract of land and every part thereof, claiming the same under and by virtue of of the said deed of conveyance *of conveyance* of the said S. H. G. Pennybacker and her said husband to said C. P. Huntington and the subsequent conveyances aforesaid; and this plaintiff, further complaining, avers and says that since the filing or the original bill herein the appeal, writ of error, and supersedeas from and to the judgment of the circuit court of Cabell county, ob-
321 tained by said Laidley to and from the supreme court of appeals of this State, referred to in its original bill herein and the said printed record, Exhibit "A," therewith filed, has been heard and determined by the said court, and the said court has reversed the judgment of the court below in favor of the validity and sufficiency of the said acknowledgement of the said S. H. G. Pennybacker of said deed, and has decided that said certificate is defective in law, and consequently that the said deed did not convey her title to said land to Mr. Huntington, and therefore the said cause was remanded for a new trial, and the same, with other actions of ejectment against its said vendees brought by said Laidley, are now pending in this

court on the law side thereof; and this plaintiff is now advised and believes and so charges that under and by virtue of this decision of said supreme court of appeals the legal title to the said real estate in controversy in this suit, no matter how it may have been wrongfully and fraudulently obtained, is in the defendant Laidley, but that by virtue of the facts and allegations hereinbefore stated and set forth this plaintiff and its vendees have a superior right, title, and claim in equity to the said tract of land and every part of it to that of the said Laidley, and that the said Laidley, both in law and equity, holds the said legal title simply as the trustee of and for the plaintiff, and that this plaintiff is therefore entitled to a decree in this cause compelling him to convey to it as such trustee the legal title to the same.

And this plaintiff being without remedy at law in the premises and relievable only in a court of equity, it prays that the said defendant John B. Laidley be inhibited, enjoined, and restrained by injunction or otherwise from all further proceedings in the said several actions of ejectment against the plaintiff and its said vendees until the matters and things herein set forth can be heard and determined in equity.

It further prays that the defendant Laidley may, by a proper decree herein, be held to be a trustee in equity of the legal title to the said tract of land so conveyed to him by the defendant S. H. G. Pennybacker, as aforesaid, for the use and benefit of this plaintiff and its said vendees, and that he be compelled as such trustee to convey the said legal title thereto to this plaintiff and its vendees.

But if, in the opinion of the court, this relief cannot be granted, then this plaintiff prays that the said Laidley be decreed to pay to it the said sum of $11,000, with interest thereon from the 25th day of February, 1870, till paid, and that the said sum of money and interest and the costs of this suit be declared and made a lien on the said tract of land and every part of it until the same is paid.

And this plaintiff prays for such other, further, and general relief in the premises as the nature of its case may require and the court may see fit to grant; and will ever pray, etc.

THE CENTRAL LAND COMPANY OF W. VA.,
By ATT'YS.

SIMMS & ENSLOW.
J. H. FERGUSON.

322 STATE OF WEST VIRGINIA, }
Cabell County. }

D. W. Emmons, one of the defendants in the foregoing bill and the agent of The Central Land Company, the plaintiff, being duly sworn, says that the facts and allegations in said bill contains so far as therein stated to be on knowledge of the plaintiff are stated on his knowledge — are true, and when stated on the information and belief of the plaintiff he believes them to — true.

D. W. EMMONS.

Taken, sworn to, and subscribed before me, in my county, this 13th day of March, 1888.

F. B. ENSLOW, *N. P.*

The exhibits referred to in the original bill and amended and supplemental bill are in the printed record, which is marked Exhibit "A."

The following is the separate answer *answer* of John B. Laidley to the amended and supplemental bill filed on the 9th day of May, 1888:

The separate answer of John B. Laidley to the amended and supplemental bill of the Central Land Company of West Virginia, a corporation, and filed against him and others in the circuit court of Summers county, to which the cause has been removed by the circuit court of Cabell county.

Respondent says it is not true that it was intended by the deed from Rebecca J. Everett to S. H. G. Pennybecker, bearing date the 18th day of August, 1865, to convey to and settle upon the land in controversy to her sole and separate use. W. H. Owings bought the land from Mrs. Everett, paid for it, and caused it to be conveyed to his daughter, S. H. G. Pennybacker, according to the terms and effect of the deed aforesaid exhibited with the bill. Mrs. S. H. G. Pennybacker had nothing to do with the transaction. It was a gift to her by her father of the land and not of the money, as the bill alleges. Defendant denies that Albert Laidley and C. P. Huntington entered into an agreement of agency, prior to the year 1870, under which said Albert Laidley bought Mrs. Pennybecker's interest in the land in controversy for $11,000, as well as the interest of her husband, Jno. M. Pennybecker. On the contrary, the circumstances effecting said transaction are as follows:

About the year 1870 or prior thereto said Albert Laidley contracted with C. P. Huntington to sell him certain designated tracts of land at a certain designated price. A part of said lands said Laidley owned himself at the time, but by far the largest part were not owned by said Albert Laidley at the time he closed his contract with C. P. Huntington for the sale of them, of all which said C. P. Huntington was well aware, but said Laidley afterwards purchased
323 the lands he had contracted to sell C. P. Huntington from the respective owners upon the best terms he could make, took the several conveyances to himself and subsequently conveyed to C. P. Huntington, according to his contract; but as to the particular tract in controversy the said Albert Laidley contracted with John M. Pennybecker, the life tenant, for the purchase of the land, but made no contract with Mrs. S. H. G. Pennybecker, who owned the remainder in fee, and said Albert Laidley paid no money either to John M. Pennybecker or his wife, Sarah H. G. Pennybecker, and never acquired any legal title by deed or otherwise either from said John M. Pennybecker or his wife, S. H. G. Pennybecker. Afterwards said Albert Laidley contracted with C. P. Huntington to sell

him the said land. Respondent does not know how much the said Laidley agreed with J. M. Pennybecker to pay him for said lands, but is informed that it was $11,000. He is informed that Mrs. S. H. G. Pennybecker did not sell said land to said Laidley nor to said C. P. Huntington, and that she never received, directly or indirectly, any money or other thing of value from said Huntington or any one for said land.

That the respondent is not informed at what price said Albert Laidley contracted with said C. P. Huntington to sell him said land he had so purchased from John M. Pennybecker.

At the request of said Albert Laidley, J. M. Pennybecker executed the deed dated Feb. 25, 1870, to C. P. Huntington for the land in controversy, exhibited with the bill, in which his wife, S. H. G. Pennybecker, attempted to join, but which is void as to her on account of the defective acknowledgment, and which has been so declared by the supreme court of appeals of this State, as the plaintiff has alleged. The legal effect of said deed was to convey to said Huntington only the title, legal and equitable, of the life tenant, Jno. M. Pennybecker, but had no effect, legal or equitable, upon the title of Mrs. S. H. G. Pennybecker; and so the defendant says the plaintiff is not and never was the owner of said land or any part of it, but only of the life estate therein, which terminated in the death of Jno. M. Pennybecker, on July 5th, 1881. Respondent says that while said Albert Laidley never acquired any legal title either to the life estate of the husband, Jno. M. Pennybecker, or to the remainder in fee of the wife, S. H. G. Pennybecker, *get* by his contract with John M. Pennybecker the said Albert Laidley did acquire the equitable title to the life estate of the said John M. Pennybecker, but no equitable interest whatever in the estate of the wife. Hence when said Albert Laidley executed a deed to C. P. Huntington, on the 13th day of April, 1870, for the other tracts of *of* land, and included a conveyance of his interest in the land in controversy, the deed could have no other effect than to convey his equitable interest in the life estate, but as that had already been conveyed to C. P. Huntington by J. M. Pennybecker himself, at the request of said Albert Laidley, by the deed of Feb. 25th, 1870, the said deed of said Albert Laidley to C. P. Huntington, so far as it might affect the title to the land in controversy, could and did have no effect whatever.

324 And respondent says that C. P. Huntington never did acquire any title, legal or equitable, to the estate of Mrs. S. H. G. Pennybecker, but he did acquire the legal and equitable title to the life estate of John M. Pennybecker.

Hence plaintiff's allegations that the sale to Albert Laidley and the conveyances to C. P. Huntington *was* of the fee and not of the life estate is false. Said C. P. Huntington undoubtedly intended to buy the fee-simple interest, but he failed effectually to acquire any right, title, or interest at law or in equity to the estate of S. H. G. Pennybecker in the land.

The $11,000 alleged to have been paid by C. P. Huntington for the land may have been a full price for the same, as the plaintiff alleges, but it was paid to said John M. Pennybacker, and was all

squandered by him, as respondent is informed and believes and so charges, so that at the date of his death none of it remained, so far as respondent knows, in the possession and ownership of his wife, S. H. G. Pennybacker. He says the land may have enhanced in value, but not one dollar of improvements has the plaintiff ever placed on the same. The building of the city of Huntington was at the expense of the public, who paid extravagant prices for lots to the plaintiff, a corporation formed, contrary to public policy, for the purpose of speculating in real estate, and has made itself odious to the Huntington public on account of its extravagant charges and prices of real estate, not one cent of its money being invested for the improvement of the city or the value of real estate in the city so far as respondent knows. Respondent says that C. P. Huntington conveyed to plaintiff by deed of special warranty only, and plaintiff has no claim to charge to $11,000 on the land.

Respondent says the rents and profits of said laid from the date of the purchase of C. P. Huntington, in 1870, until the death of John M. Pennybacker, July 5, 1881, was of greater value *of* the plaintiff than the $11,000 paid for the land of the estate aforesaid; that a part of the land has been used by the railroad company, defendants in the bill, and the Chesapeake & Ohio Railroad Co., a part by the claimants of the several lots named in the bill, and the rest for farming purposes, and that plaintiff has realized more than the said $11,000 from the rentals of said land, and still more from its sales of the lots named in the bill.

It is not true that the several grantees of the Central Land Co. of W. Va. named in the bill, to wit, S. J. Love and others, were or ever did own the respective lots alleged to have been owned by them.

Their claim of title was under the void deed aforesaid which has been set aside by the supreme court of appeals. Respondent says that it is false that he procured his deed for the land from S. H. G. Pennybecker by fraud, as the plaintiff alleges, and with intent to cheat and defraud the plaintiff. He says if he had personal knowledge of all the facts alleged in the bill and amended bill, which he denies, he would still have a perfect right to buy of Mrs. S. H. G. Pennybecker her title and claim to said land without being charged with fraud. He says she would have a perfect right to *sell*
325 for and recover the same, and that she would have a perfect right after the death of her husband to sell her interest and claim to the said land, and if she had such right to sell respondent would have the right to buy. Respondent says it is true that Mrs. S. H. G. Pennybecker did not have any knowledge of the defect in the acknowledgment of her deed to C. P. Huntington until he informed her, in Jan'y, 1882. It is true respondent is a lawyer and informed her of the defect in the certificate of acknowledgment rendering void the deed referred to from her to C. P. Huntington and exhibited by plaintiff. He showed her a copy of the deed and pointed out to her the defect and told her that in his opinion the deed was an absolute nullity, not worth brown paper, and the same as if she had made no deed at all.

It is true respondent proposed to her to bring suit to recover the land for one-half. It is not true that she declined to bring suit in all events, as plaintiff alleges. She objected to bringing the suit on the grounds that she had no faith that the land could be recovered and that the deed referred to could be set aside, and on the grounds that she did not feel financially able to prosecute a suit against so wealthy a corporation as the plaintiff, and on the grounds that her son would be discharged from the service of the Chesapeake & Ohio Railway Company, C. P. Huntington being the largest stockholder in said railway company and the corporation plaintiff, The Central Land Company. It is not true that, knowing of the defect aforesaid in the deed aforesaid, she told respondent that she was satisfied with her sale to Huntington. It is not true that she declined to bring suit on that ground. It is not true that she persisted and said in the interview with respondent in Jan'y, 1882, that she had sold the land to Huntington, had received the money for it, and that she had no interest in it and had and made no claim to it and did not wish to interfere with her sale, but was satisfied therewith, and therefore declined to sue to recover the *the* land. On the contrary, respondent offered in his interview with her in July, 1882, to buy her claim for the land if she was in doubt as to bringing the suit. She had both propositions under consultation at the same time and so told her advisers whom she consulted as to which one she would accept. It is false that *that* respondent told her not to consult any lawyer; on the contrary, he told her to consult lawyers as well as her friends. He told her he had the first claim upon her as an attorney if she sued, because he had first informed her of the defect in her said deed. She never told respondent she had no interest in the land and *the* had nothing to sell; she never declined to sell. Mrs. S. H. G. Pennybecker at that time was a sound-minded, not to say strong-minded, and smart woman and not so easily seduced by honeyed words, as the plaintiff insinuates.

After considering the respondent's two propositions together and after various consultations with her friends she accepted his propositions to buy her claim, and the price was agreed upon and the deed executed according to the contract.

326 The price paid, $500, was not inadequate. It was not the value of the land, but respondent did not buy a clear title, but only a very doubtful claim, which could only be established by much time, labor, and money in prosecuting it.

Mrs. S. H. G. Pennybecker knew all about the facts connected with her title from the date of her deed, in 1865, up to the institution of this suit. Respondent never made any false representations to her concerning any question of fact or law connected therewith, never concealed anything from her in connection therewith, not in the smallest particular, but he disclosed to her fully, frankly, and truly all questions of fact in law within his knowledge or opinion affecting the same.

It is not true that respondent offered to pay cash for the land. It is not true that S. H. G. Pennybecker had to shave respondent's note to get the money; on the contrary, she discounted it before

any part of — became due. It is not true that respondent took his title from Mrs. S. H. G. Pennybecker with full, actual, or personal knowledge of the matter referred to by the plaintiff as being within respondent's knowledge. His knowledge was derived from the records of the county and his interviews with Mrs. S. H. G. Pennybecker as to the facts connected with the title to the land in question and the various sales and transfers thereof, except that part relating to the connection of Albert Laidley with the same. Respondent says said amended and supplemental bill is not sufficient in law, and he demurs thereto, and he prays to be hence dismissed with his costs, etc.

J. B. LAIDLEY, *P. P.*

STATE OF WEST VIRGINIA, *County of Cabell,* } *To wit:*

John B. Laidley, the defendant named in the foregoing answer, being duly sworn, said the facts and allegations therein contained so far as stated on his own knowledge are true, and so far as therein stated to be upon the information of others he believes them to be true.

JOHN B. LAIDLEY.

Taken, sworn to, and subscribed before — this 30th day of April, 1888, in my said county.

GEO. F. PONNELLA,
Notary Public.

The following is the separate demurrer of defendant S. H. G. Pennybecker:

327 In the Circuit Court of Cabell County.

THE CENTRAL LAND CO. OF WEST VA., Comp't, *v.* J. B. LAIDLEY & AL., Def'ts. } In Ch'y.

The Demurrer of Sarah H. G. Pennybacker to the Bill of Complaint.

The demurrer says for cause of demurrer:

First. The bill on its face shows that the complainant cannot prosecute this cause, because—

(*a.*) It appears from the bill itself that the defendant never conveyed the land in controversy, of which she is the owner, to C. P. Huntington.

(*b.*) That the land of a married woman can never, in this State, be conveyed by a recital in a deed conveying other lands to other grantees. It must be by grant to the claimant, duly acknowledged and recorded.

(*c.*) That neither Huntington nor his vendees can claim against this defendant by way of adversary possession so long as they claim under a deed from her late husband or Albert Laidley, the vendee

of her late husband, by virtue of the estate for life of her late husband and cast upon him by marriage to defendant.

(*d.*) No transaction had between def't Huntington and defendant's late husband can, after the death of her husband, affect the lands of defendant or constitute a lien on the same.

Second. There is no equity in the bill. The supposed equities are very attenuated and, in fact, do not exist. Wherefore this defendant prays judgment whether she shall answer.

WM. A. QUARRIER,
GORDON O'BEIRNE, AND
J. M. LAYNE, *P. D.*

The following is the demurrer of John B. Laidley, filed the 9th day of May, 1888:

In the Circuit Court of Summers County.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY ET ALS. } In Ch'y.

The defendant, John B. Laidley, in the above-entitled cause, pending in the circuit court of Summers county, demurs to the plaintiff's bill and to the amended and supplemental bill, and alleges in support of his demurrer—

1. The matters stated in said bills, if true, do not show that this defendant perpetrated any fraud upon the plaintiff affecting the title to the land in controversy, and it cannot ask therefore to set aside defendant's deed.

2. The matter- stated in said bills, if true, do not show that this defendant is a trustee for use of the plaintiff, *which* they
328 show that defendant holds the legal title to the land in controversy. They do not show that plaintiff has any interest whatever in the land; do not show that plaintiff has a superior claim in law and equity on which *he* may call on this defendant for the legal title. It claims under a deed void—void at law, in equity—and which passes nothing. If plaintiff is beneficiary it is under the void deed; it makes no other claim.

3. The plaintiff shows no priority whatever with the title to the land in controversy.

It shows that the life estate it owned has terminated and that the deed under which it claimed the fee-simple did not pass any interest whatever, either legal or equitable, being a void married woman's deed. If the plaintiff occupies the position of an entire stranger to the title it certainly cannot either attack respondent's deed on charges of fraud or treat him as its trustee and ask for the legal title and adversary possession, which is short of the period of limitation of the action of ejectment by statute; cannot confer a legal title of any sort, and in equity by such possession without right cannot be so created, and the right of action is not barred by statute.

4. The plaintiff has no equity to charge the $11,000 paid by

Huntington on the land in the hands of respondent, first, because C. P. Huntington conveyed to the plaintiff with covenants of special warranty, and if the plaintiff could not charge the money paid by it to C. P. Huntington on the land in his hands as the plaintiff's immediate grantee (and it cannot on account of said special warranty), certainly it cannot charge the $11,000 paid by C. P. Huntington to Sarah H. G. Penneybecker on the lands in hands of defendant, who claims under said Sarah.

5. The plaintiff cannot charge the $11,000 paid by C. P. Huntington to Sarah H. G. Penneybecker on the land in the hands of respondent, because, second, all the said money was squandered by John M. Pennybecker in his lifetime, and at his death said Sarah H. G. Pennybecker had no part thereof remaining in her ownership, control, or possession, and as she could not be required to refund, so neither could this defendant. The plaintiff shows that she had disposed of and used the *the* property and was insolvent.

6. The $11,000 could not be charged on the land as against Mrs. Sarah H. G. Pennybecker, because that would be in effect to *to* repeal the statute prescribing how and how only married women may convey land when she or her husband has used the money by charging it in equity in the land used by selling the land to pay the charge. The statute would be a nullity and no protection during her disability, and in this case the husband got the money and spent it, and the wife got nothing from the sale to Huntington.

7. The $11,000 cannot be charged on the land because, fourth, a contract is an entire thing. The plaintiff bought the life estate, and claims to have bought the remainder in fee, but the plaintiff enjoyed
329 the particular estate from 1870 to 1881—eleven years. It might have lasted half a century longer and would have been far more valuable.

The consideration is indevisible, and it must be applied to the *voiad* part of the contract and not to the void part, and an apportionment is impossible and not proved so far by law.

8. The plaintiff is not entitled to an injunction to the several actions in ejectment. The bills show that the plaintiff has no defense at law and make no offer to confess judgment and rely on an equity.

9. The plaintiff cannot pray for all the *all the* defendants except two —this one and the said Sarah. It cannot pray for the def'ts, and defendant says the plaintiff is not entitled to any relief in equity, and he demurs to said bill and amended and supplemental bill, and he craves the judgment of this honorable court whether he ought to make any further answer thereto, and prays to be hence dismissed with his costs, etc.

JOHN B. LAIDLEY, *P. P.*

The following is the demurrer of S. H. G. Pennybacker, filed the 10th day of May, 1888:

In the Circuit Court of Summers County.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY ET ALS. } In Chancery.

The Demurrer of Sarah H. G. Pennybacker to the Plaintiff's Amended Bill of Complaint.

The demurrant says for cause of demurrer, first, the amended — on its face shows that the complainant cannot prosecute this cause, because—

(*a.*) It appears from the bill itself that the defendant never conveyed the land in controversy to Collis P. Huntington.

(*b.*) That the land of a married woman in this State can never be conveyed by a recital in a deed conveying lands to another party. It must be by grant to the claimant, duly acknowledged and recorded.

(*c.*) That neither Huntington nor his vendees can claim against this defendant by way of adversary possession so long as they claim under deed from her late husband by virtue of the estate for life of her late husband cast upon him by his marriage to defendant.

(*d.*) No transaction had between def't Huntington and defendant's late husband, can, after the death of her husband, *can* affect the lands of defendant or constitute a lien on same.

There is no equity in the amended bill. The supposed equities are very — and, in fact, do not exist; whereupon this defendant prays judgment whether she shall answer.

SARAH H. G. PENN-BACKER,
By COUNSEL.

WM. A. QUARRIER.
J. M. LAYNE.
GORDON O'BEIRNE.

330 The following depositions were taken on behalf of plaintiff at the law office of Robert N. Wood, in the town of Knoxville, in the State of Tennessee, and filed the 9th day of December, 1887:

(The notice and caption is here omitted.)

Present: R. N. Wood, attorney for all parties except John B. Laidley and Sarah H. Pennybacker, and John B. Laidley in person.

Mrs. LENA SMITH, a witness of lawful age, being first duly sworn, deposes and says as follows:

First question. State your age and place of residence and what relation you are to the defendant S. H. G. Pennybacker.

Answer. I am 19 years old; I reside at W. 69 Morgan St., Knoxville, Tenn.; I am the daughter of S. H. G. Pennybacker.

Second question. Where did you reside during the year 1881 and 1882?

Answer. In Huntington, West Virginia.

Third question. Are you acquainted with the defendant John B. Laidley?

Answer. Yes, sir.

Fourth question. Are you acquainted with the fact that your mother, Mrs. S. H. G. Pennybacker, in the month of January, 1882, executed a deed *a deed* to John B. Laidley, bearing date on the 26th day of January, 1882, and are you acquainted with the land which that deed purports to convey; and, if so, what land was it?

Answer. I have nothing to say.

Fifth question. Please state fully and in detail why you decline to answer the last question propounded to you. If any one has requested you not to answer, state who it was.

Answer. I have nothing to say to the first part of the question. No one has requested me not to answer.

Sixth question. Have you spoken with any one recently with reference to your testifying in this case? If so, state who.

Ans. No, sir; I have not.

Seventh question. Where is your mother, Mrs. S. H. G. Pennybacker?

Answer. She is not in Knoxville. I do not know where she is.

Eighth question. When did you see your mother last?

Answer. About two weeks ago.

Ninth question. Did you receive any instructions from your mother or from her attorneys directing you not to testify about the deed referred to in the fourth question above propounded to you?

Answer. I did not.

Tenth question. Have you any reason for refusing to answer said question fourth?

Answer. I have no reason.

Eleventh question. Are you acquainted with the fact that your mother, S. H. G. Pennybacker, in the month of January, 1882, executed a deed to John B. Laidley, bearing date on January 26,
331 1882, and are you acquainted with the land which that deed purports to convey; and, if so, what land was it?

Answer. I have nothing to say.

Twelfth question. Do you know the fact that your mother, in January, 1882, made a deed to Jno. B. Laidley, dated January 26, 1882?

Answer. I have nothing to say to it.

Thirteenth question. Do you know anything about any deed or did you ever hear of any such deed?

Answer. I have nothing to say to that.

Fourteenth question. Are you acquainted with a tract of land of 240 acres, situated in the city of Huntington, West Virginia, that was conveyed by your mother, Mrs. S. H. G. Pennybacker, to John B. Laidley?

Answer. I have nothing to say to that.

Fifteenth question. Are you acquainted with the fact that your mother, Mrs. S. H. Pennybacker, in January, 1882, executed a deed to John B. Laidley, bearing date on the 26th day of January, 1882, and are you acquainted with the land which the deed purports to convey; and, if so, what land was it?

Answer. I have nothing to say to it.

Sixteenth question. Are you acquainted with the fact that your mother, S. H. G. Pennybacker, in Jan'y, 1882, executed a deed to John B. Laidley, bearing date on the 26th day of January, 1882, and are you acquainted with the land which that deed purports to convey; and, if so, what land was it?

Answer. I know nothing about it.

Seventeenth question. Did your mother, S. H. G. Pennybacker, ever make John B. Laidley a deed, to your knowledge, for 240 acres of land in the city of Huntington, West Virginia?

Ans. I know nothing about that.

Eighteenth question. Prior to January 26th, 1882, were you ever at any time present when your mother, S. H. G. Pennybacker, and John B. Laidley were negotiating the trade by which your mother was to convey said 240 acres of land to said Laidley?

Answer. I went through the room at the time.

Nineteenth question. Did you hear any part of the conversation that passed between your mother, S. H. G. Pennybacker, and John B. Laidley?

Answer. I did not.

Twentieth question. When were these negotiations, at what place, and who was present, if any one, besides yourself, your mother, and Mr. Laidley?

Answer. At my mother's residence, in Huntington, W. Va. There were other persons present at the time, but I do not now remember who they were.

Twenty-first question. Are you acquainted with the tract of land of 240 acres in the city of Huntington, West Virginia, in controversy in this case?

332 Answer. I am not acquainted with the land in controversy and know nothing about it.

Twenty-second question. Were you ever present at any other time and place when your mother and John B. Laidley were negotiating about the purchase and sale of the 240-acre tract of land? If so, state when and where and who was present.

Answer. I was never present at any other time.

Cross-examined by JOHN B. LAIDLEY:

Ques. 1. You were a school girl at that time, thirteen years old, were you not?

Ans. Yes, sir.

Question 2 (by same). Do you remember that at the time your mother sold to me I promised to give you a lot if I gained my suit; also one to her and to Mollie whenever you all should select them?

Ans. No, sir.

Question 3 (by same). Your memory about the conversation and transaction is not very distinct, is it?

Ans. I never heard the conversations.

Question 4 (by same). Did you hear me say anything to your mother about what interest she had in the land she sold me at the time you passed through the room?

Ans. No, sir.

And further deponent saith not.

LENA L. SMITH.

(Certificate omitted.)

The following depositions were taken on behalf of plaintiff, at the law office of J. M. Layne, in the city of Huntington, in the State of West Virginia, and filed the 26th day of Dec'r, 1887:

(Caption omitted.)

Present: F. Enslow, att'y for plaintiff; J. B. Laidley and Layne & O'Beirne, for the defendant.

Mrs. S. H. G. PENNYBACKER, a witness of lawful age, being duly sworn, says:

1 Ques. State your name, age, residence, and if you are the same Mrs. Pennybacker that on the 18th day of August, 1865, bought from Rebecca J. Everett a tract of land on the Ohio river, Cabell county, containing 240 acres, known as lot No. 4 of the Frumpton land.

Ans. My name is Sarah H. G. Pennybacker; I am 46 years old; I reside in Huntington, Cabell county, West Virginia; I am the same Mrs. Pennybacker who bought the land and one of the defendants in these suits, and the same who testified in the ejectment suit of John B. Laidley against the Central Land Company.

Ques. 2. Are you the same Mrs. Pennybacker who, with your husband, John M. Pennybacker, executed a deed the 25th day of Feb'y, 1870, conveying to C. P. Huntington a tract of land bought
333 by you of Mrs. Everett and in controversy the last of John B. Laidley against the Central Land Co. in ejectment and in the suits?

Ans. I am the same party referred — in a deed executed by my husband to C. P. Huntington.

Ques. 3. State whether or not you, on the 25th day of Feb'y, 1870, signed your name as S. H. G. Pennybacker to a deed of that date purporting to convey to C. P. Huntington the tract of land in controversy in these suits.

Ans. I don't remember of signing any deed, but I signed a good many papers.

Ques. 4. Do you remember anything about the circumstances and facts connected with the sale of a tract of land described as lot No. 4 of the Frumpton land, in Cabell county, on the Ohio river, in controversy in this suit, to C. P. Huntington and the transfer of the possession thereof by yourself *as* yourself and husband, John M.

Pennybacker, to C. P. Huntington? If so, when was the sale and transfer of possession made?

(Question objected to as leading and immaterial.)

Ans. My husband sold the land to C. P. Huntington, reserving one acre upon which we continued to leave, and C. P. Huntington took possession of the remaining part of the land.

Ques. 5. From the time C. P. Huntington took possession of the tract of land until the present time who has had possession and control of the same and by whom has it been occupied?

Ans. I suppose it has been held by the Central Land —, but don't know who has been occupying it.

Ques. 6. At the time C. P. Huntington took possession of the said land, or just before that time, did not you and your husband sign a written paper or deed, dated the 25th day of February, 1870, a copy of which is now here shown you on pages 40, 41, and 42 of the printed record in the ejectment suit of John B. Laidley against the Central Land Co. of West Va., which record is made part of the bills of complainant in these suits?

Ans. I signed it.

Ques. 7. Do you know what was the consideration paid by C. P. Huntington for said land? If so, state.

Ans. Eleven thousand dollars paid to my husband. I didn't see him pay him.

Ques. 8. State whether or not this $11,000.00 was paid to your husband according to your directions and for the purpose of meeting the same for your benefit.

Ans. I didn't have anything to do with it; he sold it and got the money and didn't — me anything about it.

Ques. 9. State whether or not on the 17th day of July, 1872, in a suit brought by you against your husband and others, a copy of the bill in which is set out on page 91 of the printed record filed in these suits, you did not state that you sold the Everett land to C. P. Huntington for $11,000, which money was paid to your husband by your directions.

334 Ans. I don't recollect anything about it.

Ques. 10. If in that suit you made that statement over your signature and under your oath, was or was it not the truth?

Ans. I suppose, if I made it, it was the truth, of course.

Ques. 11. State if you are acquainted with the defendant, John B. Laidley; if so, how long have you known him?

Ans. Yes, sir; ever since I have been in Cabell county—nearly 20 years.

Ques. 12. Where were you living on the 26th of January, 1882, at the time you executed a deed to John B. Laidley for the land in controversy in these suits, and where did Mr. Laidley live at that time?

Ans. I lived on 7th Ave., in the city of Huntington, West Va. between 9th and 10th street-, about one block and a half from the land in controversy, and Mr. Laidley lived in Barboursville, Cabell county, West Va.

Ques. 13. State fully all the circumstances attending the execution by you of the deed to John B. Laidley for the land claimed by him in these suits, what conversations you had with him in regard to the matter, what he told you, and all the circumstances, fully.

Ans. He came to me, asked if I remembered of my husband selling the land to the company, and I told him I did; he then told me I had a dower in the land and I contended that I had none. I could not see that I had a dower, and he told me under the new constitution of W. Va. I had a dower and wanted me to bring suit to recover that dower, and I refused to bring the suit, as I had no money to pay on a suit. I also told him my son was employed in the C. & O. shops, and if I brought suit they would discharge him; that his help was essential to my living. Then Mr. Laidley told me that he would bring suit and 'tend to the suit for me, and if we gained it we would go halves; if not, I was to pay him for his services. I positively refused to bring the suit. He then asked me what I would take for my dower. I told him if I had a dower I would take most anything, and he offered me $500.00. In the meantime he allowed me the privilege of consulting with any friends I had, and bound me up that I would not see a lawyer. I told him I would accept the $500.00, expecting to get the $500.00, and he paid me $100.00 down and gave me his note for the balance. I afterwards discounted the note—got $225.00 for it.

Ques. 14. State where these conversations were had with Mr. Laidley, how many times he was to see you in regard to the matter, and whether or not he informed you that the deed of yourself and husband to C. P. Huntington was defective.

Ans. He came to see me three times at my home in Huntington; said nothing of the defect in the deed, but said it was a dower.

Ques. 15. State whether or not Mr. Laidley ever told you in any of the conversations, before you executed the deed, that the interest in the land which you had was a fee-simple interest.

335 Ans. I don't know what a fee-simple interest is, but he told me I had a dower.

Ques. 16. State whether or not Mr. Laidley, at any time, ever told you that the deed of yourself and husband to C. P. Huntington was not worth brown paper.

Ans. He said nothing of the kind.

Ques. 17. Mr. Laidley, in his deposition given in these cases, taken on the 18th day of October, 1887, states that you fully understood at the time you executed the deed to him after your husband's death that the legal title to the land sold him was in yourself, and with that understanding you sold and conveyed him the land for $500.00. Now, state if you, at the time of the conveyance, did or did not have full knowledge of the fact that the deed to C. P. Huntington was defective, and that you were the owner of the property, and that by your conveyance *and* intended to convey the entire property to him.

Ans. I knew nothing of the defective deed. He told me nothing of the kind. I only conveyed my dower to him, as he told me I had a dower.

Ques. 18. At the time you made this conveyance were you acquainted with the value of the land; if so, about what would you have considered the land worth at the time?

Ans. I don't know anything about what it was worth; but I certainly would not have sold Mr. Laidley 240 acres of land for $500.00 had I known the deed was defective.

Ques. 19. State who, if any person, was present during any of the interviews had between you and Mr. Laidley in regard to this conveyance.

Ans. Mrs. Saunders and my two daughters, Mrs. Ferguson and Mrs. Walstrum. My daughter, Mrs. Ferguson, was present when I acknowledged the deed before Mr. F. F. McCullough.

Ques. 20. State whether or not Mr. McCullough, who took your acknowledgment to the deed, told you that the deed conveyed the absolute or the whole estate in 240 acres of land in question at the time he took your acknowledgment. State fully what he did say at the time.

Ans. He said nothing about the 240 acres. He asked me if I knew what I was signing. I told him I was signing a paper conveying a dower which Mr. Laidley told me I had.

Ques. 21. State whether or not Mr. Laidley was present when the notary took your acknowledgement.

Ans. No, sir, he was not; there was no one but Mrs. Ferguson.

Ques. 22. Mr. McCullough, in his deposition in these causes, states that he told you at the time he took your acknowledgment that the deed conveyed 240 acres of land, and that he explained it fully to you. Now, state whether he at the time explained to you that you owned the land mentioned in the deed, and that you was conveying the entire estate in the 240 acres of land to John B. Laidley for $500.00.

Ans. Mr. McCullough made no explanation to me whatever.

336 Ques. 23. Just before this conveyance, what gentlemen among your friends did you consult in regard to the matter?

Ans. Mr. Ham Dickey and E. T. Mitchell.

Ques. 24. Did you consult any attorney in regard to your right under this deed?

Ans. No, sir.

Ques. 25. During any of the conversations that you had with Mr. Laidley in regard to this land before you conveyed the same to him, did you have any conversation about the value of the land or any talk as to the parties then in possession of the same?

Ans. No, sir; nothing was said about the land, only about the dower.

Ques. 26. How long had your husband been dead before you executed a deed to J. B. Laidley?

Ans. He died July —, 1881. The deed was made in January, 1882.

Ques. 27. During the conversation in regard to the conveyance of the land did you inform Mr. Laidley that the land had been sold to C. P. Huntington, and you made no claim thereto?

Ans. Yes, sir.

Ques. 28. Did not J. B. Laidley appear to know at the time the deed was executed by you how the land was situated and who was in the possession of the same?

Ans. He didn't tell me anything about it particu*ticu*larly; he only told—spoke of the dower to me.

Cross-examined by JOHN B. LAIDLEY:

Ques. 1. Do you believe in the truth of the Bible, in the existence of the God of Israel, and the Christian religion and the doctrine of future punishments?

Ans. I certainly do. I guess as much as *he*. I am a member of the church and testify to the truth.

2 (by same). What, in your opinion, is the value of the land in controversy?

Ans. I have been told it is worth $250,000, and that is my opinion.

3 (by same). What did you think your interest was worth which you sold to me in Jan'y, 1882?

Ans. I diden't sell my interest. I sold my dower, as he told me it was dower, for $500.00. I don't think it was worth much.

4 (by same). Did you think it was worth $500 when you sold it to me?

Ans. No, sir; I did not think it was worth that much.

5 (by same). Did you think it was worth anything at all, and what did you found your opinion upon?

Ans. Well, I thought that if he was foolish enough to give me $500 for a dower I would accept it, as I could not see that I had a dower; of course, I thought it was worth a little. The land was my own, and I had always heard all my life that a woman could only hold a dower in her husband's estate.

337 6 (by same). What part could a widow hold in her husband's estate?

Ans. I always heard that she could hold her dower—a third of it.

7 (by same). State whether you bought the land in controversy from Mrs. Rebecca J. Everett; and, if not, state all about it—how you came to own it.

Ans. I bought it of Mrs. Everett, recently after the war, on the 18th day of August, 1865. I paid her $8,000.00 in cash, and she made me a deed for — land on the day just mentioned. I suppose on page 37 of the printed record exhibited in these suits is copy of the deed. I don't know that I ever saw the deed.

8 (by same). Where did you get the money? Why did you not see the deed? What estate did it convey to you?

Ans. My father gave it to me, because my husband was transacting my business, and Mrs. Rebecca J. Everett delivered the deed to him. The deed gave the whole estate.

9 (by same). How was the money paid? And state fully all about it.

Ans. I never saw the money myself nor any check for it, as I

recollect. The transaction was between H. H. Miller, agent for Mrs. Rebecca Everett, and my husband, agent for me, and they completed the transaction between them.

10 (by same). Did not the deed from Mrs. Everett to you settle in you a devoice interest only?

Ans. It gave me possession of the whole estate. There was no dower interest in it. It gave the whole estate to me. It was mine individually.

11 (by same). When did you first ascertain that you did not have a dower interest in the land you sold me?

Ans. When I advised with my friends they told me I could not have a dower interest in it. I mean Mr. Dickey and Mr. E. T. Mitchell.

12 (by same). Was that before you sold to me, and how did they come to tell you that you had no interest in it? Did they tell you that you had any interest?

Ans. I went to them for advice and explained it to them as Mr. Laidley told me, and they said they could not see that I had a dower, and that they would take the $500.00.

13 (by same). Was the land ever owned by your husband, John M. Pennybacker?

Ans. No, sir.

14. Did I ever tell you that the land belonged to your husband?

Ans. No.

15 (by same). When did you first learn that your deed for the land to me, dated Jan'y 26, 1882, conveyed the land and not the dower? And state fully who told you and the time, place, and circumstances.

Ans. When I first went to court to attend the trial of the action of ejectment between J. B. Laidley and the Central Land Company. I don't recollect who told me. It was common talk. After the trial Mr. Primell told me the day you, Mr. Laidley, put me on
338 the witness stand at the trial of the action of ejectment. I am sure Mr. Primelle is the first one who told me, and he advised me to advise with a lawyer, and I consulted Mr. O'Beirne, and he is the next one who told me.

16 (by same). How soon after Primell told you did you consult Mr. O'Beirne?

Ans. It was after the close of the trial—I don't recollect how long—or at least after I quit going up there.

17 (by same). Who had you summoned at the trial? What did they want to prove by you? Who talked with you about your testimony in that case before the trial?

Ans. The Central Land Company had me summoned. I don't know what they wanted to prove by me. No one talked to me about what — should testify in that case before the trial.

18 (by same). Did Mr. E. B. Enslow, Mr. H. C. Simms, or Ferguson, or Hegeman, or D. W. Emmons talk to you about the transaction between you and J. B. Laidley at the time you executed the deed to him for the land in question, or any time before the trial of the action in ejectment?

Ans. They did not. None of them had any conversation with me concerning the matter before I was called on the witness stand to testify at any time.

19 (by same). Did you tell any one before you testified what you would say about the conversations between you and J. B. Laidley at the time you executed to him the deed referred to?

Ans. No; I did not, because I did not know what they were going to ask me.

20 (by same). How many days were you at Barboursville attending the trial? Did you ever go to the hotel known as the Burnett house and talk with Mr. Hogeman or Ferguson about your evidence or about anything else before you testified?

Ans. I believe I was at court twice. I never went to the hotel; I came home every night and I did not see the lawyers till I came into the court-room. I do not know — long the trial lasted.

21 (by same). Who summoned you? Who examined you? Who cross-examined you at the trial?

Ans. I believe Dr. Buffington gave me the summons. Mr. Laidley put me on the stand and examined me. I don't know who cross-examined me; I think it was Mr. Hogeman.

22 (by same). What did I put you on the stand to prove by you?

Ans. I don't know. About the first thing you asked me was if Mr. Laidley had told me I had an interest, and I told him he told me it was a dower. Under the new constitution of West Va. I had that dower.

23 (by same). Did not I put you on the stand as my witness to prove by you that you were the widow of John M. Pennybacker, and to prove his marriage and his death, and did not Mr. Hogeman ask you the questions about dower?

Ans. I don't — what you put me on the witness stand for, but I remember you ask- me where, to whom, and when I was
339 married, and about the death of my husband. I don't recollect who first ask- me as to representations about my interest and dower. I did not have any conversation with you before I went into the court-room.

24 (by same). Did you ever tell me that I had told you you had a dower interest only, and that was all you sold me, and that you would give me back my $500 if I would set aside the deed you made me, or anything of that sort?

Ans. I never had any conversation with you about it, except on the witness stand at the trial in the court-house, and I never offered to.

25 (by same). Did you ever offer to refund the $500 I paid you if I would set aside your deed to me?

Ans. No, sir: I never said anything about it one way or another.

26 (by same). Are you willing now to refund my $500, with the interest on it, and to reimburse me the costs and taxes I have paid on the land and suit since I got your deed, if I cancel your deed to me, if the costs and taxes paid by me amount to over $500?

Ans. Yes; I will.

27 (by same). Did you not just now say that you would not pay me back the costs and taxes on such conditions?

Ans. I did not know how much the costs would be. If it is not over $1,000.00, including the $500 purchase, I will give you the $1,000.00—not if the amount be over $500. I mean that if the costs and taxes amount to over $500.00 I will not.

28 (by same). Are you not willing to pay me back the $500, and its interest and the costs and taxes I have paid out on the land and suit if I will cancel your deed to me, even if the whole amounts to over $1,000.00?

Ans. I would not pay any more than $1,000.00.

29 (by same). Would not pay me an attorney's fee of $500, in addition to the costs, taxes, and $500 purchase-money and its interest for my services in setting aside the deed you made to C. P. Huntington?

Ans. Yes, sir; I will give you $500.00, and I will not give you one cent more as att'y's fee.

30 (by same). Did not Mr. Gordon O'Beirne not — to you answer yes to the last question?

Ans. I told you no, sir; do not judge me — yourself.

31 (by same). Did not I offer to bring suit for you to recover your interest in the land for one-half of the land?

Ans. Yes, you did; you offered to bring the suit for me and we would go "halves" if we gained it; if not, I was to pay him for what he did.

32 (by same). Did I not offer to lend or advance the money to pay the costs of suit and take your note for the same and pay myself back out of the land when I gained the suit?

—. ——.

33 (by same). The witness was here presented the original deed from Mrs. R. J. Everett to S. H. G. Pennybacker for the land
340 in question, dated Aug. 18th, 1865, and asked if she had ever seen the deed before and whether she did not deliver it to J. B. Laidley; and, if not, did she deliver it to C. P. Huntington; and, if not, to whom did she deliver it.

Ans. I don't recollect of delivering it to any one. I don't recollect of seeing it. Mr. Pennybacker had a good many deeds, but I don't recollect of seeing this one, but I remember of my father's giving me money to pay for it.

34 (by same). At the date of this deed you lived in Belleville, Wood county, this State, did you not? How soon did you move to Cabell? Where did you move to? When did you move to where you left the land in question in 1870? Where have you lived ever since?

Ans. Yes, sir; I lived in Belleville, W. Va. On the 18th day of Sept., 1865, I moved to Cabell county, into a frame house, on the river land, on the land in controversy, just below the Beuhing lane, and I lived there till 1870, when I moved onto my reservation on 5th Ave. and 7th street. After the sale to C. P. Huntington I lived on the reservation till I traded with W. J. Parsons for the Pea Ridge farm, and then I moved there. We traded in Feb'y, 1874,

but we moved in the fall of that year. We lived there two years and sold the Pea Ridge place to Dr. John N. Buffington about 1876, and then with the proceeds of the sale of the Pea Ridge place we bought the Graham place; sold the Pea Ridge place for something over $1,000.00, and gave $1,000.00 for the Graham place. I think we lived there till January, 1881, and sold it for $1,000.00, and with that $1,000.00 I bought the house and lot on 7th Ave., between 9 and 10 streets, from H. Dickey and wife. I rented from J. M. Noble a frame house on 7th Ave., between 9th and 10th streets, in January, 1881, and moved into it from the Graham place, and lived in the Noble house from January, 1881, till I bought and moved in the Ham. Dickey house, which was adjoining. I bought the Ham. Dickey house on the 24th day of Feb'y, 1883, and moved into it afterwards. The Pea Ridge place was mortgaged. I got about $100.00 after the mortgages were paid off out of the purchase-money.

(The foregoing several questions and answers No. 33 and 34 are objected to as irrelevant and improper.)

35 (by same). In 1881, at the date of the death of your husband, did you own any part of the sum of $11,000 paid your husband by C. P. Huntington for the land in question; and, if not, did you own any property bought with the said money or any part of it mediately or immediately? Was not the Ham. Dickey house all the property you owned or now own, and is not that the proceeds of the reservation of one acre out of the 240 acres in controversy, and all that was sold to you off it through the trade for the Pea Ridge place and sale of the Graham place?

Ans. At the death of my husband, in 1881, I had no part of the $11,000.00 paid my husband by C. P. Huntington, and never did have any of the $11,000—never derived any benefit from it in any way, shape, or form. At the death of my husband I owned
341 the Graham place, and that is all I did own at that time, and the Graham place was bought with the proceeds of the Pea Ridge farm, and the Pea Ridge farm was bought from the proceeds of the one-acre reservation.

36 (by same). You were keeping boarders on 7th avenue, were you not? Did I not stay all night at one time at your house during our negotiations, and did not I eat a meal or two at your house during our negotiations, and were we not very friendly and elated at the idea of beating the company, and did you not after the sale was closed tell me you did not care how much I made out of the company so I did not get you into trouble?

Ans. Yes; I was keeping boarders in January, 1882. I don't think you did. I don't recollect whether you stayed all night or not. I do not know whether you ate any meal at my house or not. We were friendly, but I was not elated over it. I was not elated over beating the company, for I did not have anything to do with beating the company. I don't recollect of telling you that I did not care how much you made out of the company; don't recollect

of making such a remark. I won't swear positively that I did not tell you, for I don't recollect it.

37 (by same). What did you tell F. B. Enslow when you sold him my note? State the conversation and the time and place thereof.

Ans. I sold him the note in his office in Huntington. I don't recollect the time, but it was after the first $100.00 on the note was due. I only had one note or paper, but by the terms of note $100 was due one year from date, and $100.00 was due 2 years from date, and $100.00 was 3 years from date, and $100.00 four years. This is my recollection of the note I sold to Enslow after the first $100.00 was due. Mr. Enslow said he did not care anything about taking the note, but said he had a claim on Mr. Laidley's library, and that was the only reason why he would take it. Mr. Enslow said that Mr. Laidley was hard up, and he could not make it off him, but thought if he had the money he would pay it.

38 (by same). Did you tell Mr. Enslow what the note was for?

Ans. I told Mr. Enslow that you had given me that note for my dower in that land; at least I thought I did.

39 (by same). Are you positive that you did tell Mr. Enslow that I gave the note for your dower interest?

Ans. No, sir; I am not positive, but I think I did.

40 (by same). Did you not tell him that you had sold to me the land in controversy and that the note was given for the purchase-money?

Ans. I don't recollect of telling him.

41 (by same). Will you state that you did not tell him that?

Ans. I will not state that; I don't recollect of telling him that.

42 (by same). If he, Enslow, says you did tell him that, and that you did not say anything about dower to him when you sold the note to him, will you contradict him on your oath?

312 Ans. I will have to hear what he has to say before I will contradict him on oath.

43 (by same). Please answer my last question.

Ans. I did answer it.

44 (by same). Do you mean that you can't say and do not say that you told him the note was for the land, without saying anything about dower?

Ans. If I said anything about it it was in regard to the dower; but that was my understanding of what I was selling.

45 (by same). Will you swear positively that you did not tell him in his office, when you assigned the note to him, that it was for the land, without mentioning dower?

Ans. No; I won't swear positively.

46 (by same). Will you swear positively that you assigned the note to him after it became due?

Ans. I won't swear positively as to that either, but I think I did.

47 (by same). When did I pay you some money on the first note, how much, and was the assignment made shortly after that time?

Ans. I don't recollect the time. I don't think the assignment was before you paid me something on the note. I don't think the assignment was a very long time after the payment. I think the payment was $20 or $25. I ain't right positive you paid me, but I think you did. I didn't tax my memory.

48 (by same). Why did you not tell me before you sold the note to Enslow?

Ans. Because I had written you and the money was due and you did not pay.

49 (by same). Did you write to me for the money before the note was due, and that was the reason I would not?

Ans. I don't recollect. I recollect of writing to you.

50 (by same). Did I ever send you a registered letter?

Ans. I don't recollect whether you did or not.

51 (by same). Did you ever have the land in controversy entered on the land books of Cabell county in your name after the death of your husband, and have you ever paid any taxes thereon since the death of your husband?

Ans. Not that I know of.

52 (by same). You have, just this month and since the decision of the Supreme Court of this question as to the sufficiency of the deed to C. P. Huntington for the land, brought suit against me for the land. Why did you not bring suit before and as soon as you found out you had sold the land and not the dower only to me according to your statement?

Ans. Because I was in no hurry.

53 (by same). Was you not waiting to see whether I gained the case or not in the Sup. Ct.?

Ans. That is my business, what I was waiting for.

54 (by same). I insist on an answer to my last question.

Ans. I don't know that I was waiting for that particular.

343 55 (by same). What were you waiting for?

Ans. That is my business. I don't know that you can compel me to tell you what I was waiting for.

56 (by same). You have sold out to Mr. Gordon O'Beirne, have you not?

Ans. That is my business, too; no; I have not sold out to Mr. O'Beirne.

57 (by same). Have you not made a deed to Mr. O'Beirne for one-half of the land in question?

(The witness objects, by advice of counsel, J. M. Layne, to answer this question as being irrelevant, improper, and in no way responsive to the examination-in-chief.)

58 (by same). Is not the consideration of such deed for such one-half of said land his legal services in acting as your attorney in the suit you have just brought against me about the land?

The witness declines to answer, by advice of counsel, for the same reasons mentioned in answer to last question.

59 (by same). Did you ever tell any one that you had sold to me your land after you had made me the deed therefor?

Ans. I told them I had sold you my dower, as you represented to me.

60 (by same). To how many and to whom did you tell that you had sold a dower after the making the deed?

Ans. So many I could not numerate them.

61 (by same). Can you name any one?

Ans. Yes; I can name several; Mrs. Russell, Mrs. Swayne, and others on the street.

62 (by same). Did you ever tell any one you had sold to me after you had made the deed and never mentioned dower to them?

Ans. No, sir; I don't recollect of ever telling any one without telling them also about the dower.

63 (by same). Did you ever tell Mrs. S. A. Donnella that you had sold to me the land and not say anything about dower after you had made the deed to me?

Ans. I don't recollect of telling anything of the kind.

64 (by same). Did you ever tell Miss Mattie Johnson you had sold to me and say nothing about dower?

(Question objected to by Mr. O'Beirne, att'y for Mrs. S. H. G. Pennybacker, as having been answered once.)

Ans. I have not seen Miss Mattie Johnson in 10 years, only at church. I don't think I ever mentioned it to anybody without telling them it was a dower Mr. Laidley told me about.

65 (by same). Did you not tell Mrs. S. A. Donnella that Mr. Laidley told you he could recover your land back?

Ans. I don't think I ever did.

66 (by same). Did you ever tell Mr. Jarvis that you had sold to me the land in question and never mention dower (after the deed was made)?

344 Ans. I don't think I ever told anything of the kind.

67 (by same). Did you ever mention the subject of the sale to Mr. Jarvis, your neighbor, and did you ever mention dower to him as what you had sold?

Ans. I don't recollect of speaking to him about it. If I spoke to him, I spoke to him — the dower certain.

68 (by same). Did you ever mention the subject of the sale to J. W. Trinear or in his presence; and, if so, did you tell him you had sold me your dower in the land?

Ans. I don't remember of speaking to him about it or in his presence.

69 (by same). If you did mention it to him, did you say you had sold a dower to me and not the land?

Ans. If I mentioned it I certainly told him I had sold the dower and not the land.

70 (by same). Why did you not bring suit in your name and give me half of the land recovered by the suit, as I proposed to you?

Ans. Because you offered to bring suit for me and if you gained

it we were to go "halves;" if not, I was to pay you, and that would take what little money I had, and I thought you was trying to get what little I had.

71 (by same). You did not have much faith in me at the time I was negotiating with you for the sale of the land?

Ans. No; I did not have much faith in you at the time.

72 (by same). Did you trust in me or believe what I told you about the deed you had made to Huntington—your right to recover the land or what interest you had?

Ans. You did not speak to me about the deed to Huntington. No; I could not see that I could have a dower. I did not trust or believe in what you told me as to having a dower.

73 (by same). Why did you not trust me when I told you, as you say, that you had a dower interest in the land?

Ans. Because I had no confidence in you.

74 (by same). Did you consult A. P. Mitchell and Squire E. T. Mitchell in the — office in Huntington whether you would bring suit or sell out to me, and were they both present at the time?

Ans. I consulted E. T. Mitchell. I met Arthur on the street and asked him where his father was, and he went into the store with me to see his father. Arthur was not present when I was speaking to his father.

75 (by same). What did E. T. Mitchell tell you to do?

Ans. I explained to him that Mr. Laidley told me I had a dower in the land sold to C. P. Huntington, and I contended that I could not have a dower, and he, Laidley, said I had, under the new constitution of West Virginia, a dower, and Mr. Laidley had given me persuasion to advise with any friends I might have, and not to go to any lawyer. Then I told Mr. Mitchell that Laidley had offered me $500.00 for that dower, and he, Mitchell, advised me to accept it, for he could not see that I had a dower.

76 (by same). So you acted on Mr. Mitchell's advice and not on mine in selling.

345 Ans. Of course I did.

77 (by same). Mr. Mitchell was a justice of the peace at the time and cousin by marriage to your husband, and he and Arthur P. Mitchell were smart business men and were friends to you at that time, were they not?

Ans. E. T. Mitchell was not justice at that time; at least I do not think he was. They were considered smart business men—smart as the common run. E. T. Mitchell was justice of the peace after that. His (E. T. Mitchell's) wife was a cousin to my husband, and they were friendly to me at the time.

78 (by same). They were your business advisers, even *they* not in other matters?

Ans. I do not know that they were particularly so.

79 (by same). Did you have any consultation with Arthur P. Mitchell or advice from him about the sale to me? Did you talk with him about it at his house? Did not you then stay all night there?

Ans. I did not stay all night at his house then, but I believe I

spoke to him something about it. I believe he advised me to take the $500.00.

80 (by same). Did you tell him that I claimed I could set aside the deed you had made to C. P. Huntingtour for the land and recover the same for you?

Ans. I don't recollect of telling him anything of the kind.

81 (by same). Will you swear you did not tell him that?

Ans. No; I won't swear it.

82 (by same). Have you had read to you his, A. P. Mitchell's, deposition in this case?

Ans. No; I have not heard it.

83 (by same). If Arthur Mitchell swears that you told him when you consulted him about selling to me or bringing suit that I claimed that I could set aside the deed you had made to Huntington for the land, is that statement of his true or false?

Ans. If Arthur Mitchell says if I told him that Mr. Laidley said the deed "was no good," and that he could upset it, I say he swears falsely.

84 (by same). What did he tell you about selling to me?

Ans. I am not bound to tell. I don't propose to tell you. He told me to take the $500.00.

85 (by same). If Frank McCullough testifies in this case that I was present when he took your acknowledgment to your deed to me for the land in question, is that statement true or false?

Ans. I say it is false.

86 (by same). If he, McCullough, testified that he explained that deed to you before he took your acknowledgment, is that true or false?

Ans. It is false.

87 (by same). What did he say and what answer did you make?

Ans. He asked me if I knew what I was signing. I told him yes; I was signing my dower away to you.

346 88 (by same). Did you sign the deed before McCullough at the time you acknowledged it?

Ans. Yes, sir; I did—I guess I did.

89 (by same). Did you know how to read and write at that time?

Ans. I certainly did; mighty old to learn afterward.

90 (by same). Were you not right well educated, of sound mind and body; in fact, rather a sensible woman in a business point of view?

Ans. I have a good common education. I suppose I was of sound mind and body. I suppose I was considered a sensible woman in a business point of view.

91 (by same). Were you educated at a college?

Ans. I was educated at Brookville, Maryland, boarding school.

92 (by same). Was any one present when you signed and acknowledged the deed to me for the land except McCullough?

Ans. My daughter, Mrs. Ferguson; no one else.

93 (by same). What time of the day was the acknowledgment taken?

Ans. I don't exactly recollect.

94 (by same). Did you tell me that your father had given you the land, had paid the $8,000 for it, and had the deed made to you at my interview in negotiating the sale?

Ans. I did tell you.

95 (by same). Did Arthur P. Mitchell know all about that and about your making the deed to C. P. Huntington at the time he advised you to sell me?

Ans. Yes; of course he knew it.

96 (by same). Did I tell you how you had dower in the land, and did you ask me to explain it to you?

Ans. You told under the new constitution that I had the dower.

97 (by same). Did you ask me who had the rest of the estate? If dower was only a third of it, did you ask me who had the rest?

Ans. No, sir; I did not ask you.

98 (by same). If dower is only one-third for life, did you ask me and did I tell you who would get the estate when your dower in life estate was ended?

Ans. I did not ask you anything about that and you did not say anything about it.

99 (by same). Did I tell you that the land was your husband's under the new constitution?

Ans. You said nothing about it.

100 (by same). Did I tell you you could have dower in your own land under the new constitutian?

Ans. Yes, sir; you told me I had the dower under the new constitution in my own land.

101 (by same). Did I tell you that your deed to C. P. Huntington was good and valid, and that you could hold that deed good and still have dower in your own land, notwithstanding your deed?

Ans. You did not tell me anything about the deed to Huntington, and o-ley spoke of the dower.

347 102 (by same). Did you tell me that you had conveyed the land to C. P. Huntington, and that you did not have any estate in it?

Ans. I believe I did.

103 (by same). Did I before that tell you that you had dower, anyhow, notwithstanding that deed?

Ans. Yes, sir; you did. You said under the new constitution I had a dower, notwithstanding the deed to Huntington.

104 (by same). Were you fool enough to believe it?

Ans. I didn't believe it at first, but after you told me that under the new constitution I had a dower I didn't know but what it might be so.

105 (by same). Did you tell Arthur P. Mitchell I said you had a dower under the new constitution in your own land when he advised you to sell to me?

Ans. I think I told him the whole circumstance, but was going to him for advice.

106 (by same). Are you positive you mentioned to him anything about dower?

Ans. I am positive I did.

107 (by same). He swears falsely if he says you did not mention dower in that conversation, does he?

Ans. I won't say he swears falsely; he might not have understood me. I do not believe Arthur Mitchell would swear a lie.

108 (by same). At the close of the sale and negotiations, did I ever promise the girls, especially Minnie or Lena, a certain lot, to be selected where you liked best?

Ans. You did promise Minnie one, and if she did not take too valuable one you would give her two.

109 (by same). Were the lots that Minnie was to have to be hers forever, to sell or keep and do as she pleased with?

A. I suppose so.

110 (by same). What was your understanding at that time about that?

Ans. It was to be hers. She was to get it from you, as I understood it, as a gift from you.

111 (by same). How could I give her, Minnie, a lot as hers forever, or to sell and dispose of as she pleased, if I only had a dower in the land under your deed to me?

Ans. If you gained my dower, which I sold you, Minnie was to have the lot.

112 (by same). Who was present at our first interview, who at our second, who at our third?

Ans. I believe the three ladies, Mrs. Ferguson, Mrs. Saunders, and Mrs. Walstrum. Mollie Ferguson and Minnie Walstrum were unmarried at that time. All three of them were present at each interview.

113 (by same). Please state if the Mat. Noble house, where you were living, did not have three rooms on the first or ground floor, and state what each room was, and for and in which interview each interview occurred.

Ans. It has three rooms; the first was used for a parlor or
348 sitting-room, the one right back of it was used for dining-room, and the one right back of that was used for a kitchen. I think each interview occurred in the parlor.

114 (by same). Please state at what hour of the day each interview occurred.

Ans. I don't remember the hour of the day at which each one of the interviews occurred.

115 (by same). Please state if the last interview was the one when you signed and acknowledged the deed.

Ans. No, sir; I don't recollect of any interview with you after signing the deed.

116 (by same). What was the last interview with me about?

Ans. The last one was about the dower and the acceptance of the $500.00 therefor.

117 (by same). What was said at our second interview?

Ans. You told me I had a dower and bringing the suit.

118 (by same). What was the first one about?

Ans. About the dower.

119 (by same). Was not each interview about ten days or two weeks apart?

Ans. I don't exactly recollect, but don't think it was.

120 (by same). How long apart were they? Did not I go to my home in Barboursville, ten or eleven miles distant, at each time and return for your answer each time?

Ans. I do not know how far apart they were. I think the second interview you came back the next day. I don't know where you went. I suppose you came back to get my answer.

121 (by same). At our first interview did I not tell you that the deed you had made to C. P. Huntington was absolutely void; that it was not worth brown paper, and that it was the same as if you had not made any deed at all, and insist on your bringing suit for the land, I to have one-half and you one-half if we recovered?

Ans. No, sir; you told me nothing of the kind about the deed being bad, but you did insist on bringing suit for dower, I to have one-half and you the other, and if we did not gain it I was to pay you for your services.

122 (by same). Did I not tell you that I would bring you the written opinion of the ablest attorneys in the State to the effect that your deed to C. P. Huntington was absolute nullity, and that you could recover the land, and insist on your bringing the suit rather than to sell out to me?

Ans. You told me nothing of the kind.

123 (by same). You say I bound you up not to advise with any lawyer. How did I bind you—by any contract, verbal or written?

Ans. You bound me on the honor of a lady that I would not advise with any lawyer, as they would want to take the case out of your hands. There was no contract, verbal or written; only on my honor.

124 (by same). Did I not tell you to consult a lawyer at our first interview and your friends, but not to give your case to
349 another attorney and cut me out, as long as I had told you about your right to recover?

Ans. No, sir; you did not tell me that.

125 (by same). Did I not tell you to consult a lawyer, but not to cut me out, if you did?

Ans. No; you told me not to consult a lawyer, but to consult any friend I had.

126 (by same). Did you know before I told you anything about your deed to Huntington being bad and your right to recover?

Ans. You never told me anything about the deed being bad.

127 (by same). Did any one else ever tell you before I did of your right to bring suit about the land?

Ans. No, sir.

128 (by same). Was anything said at the first interview at all about selling for $500? Was it not only about the offer to sell and to consult your friends whether you would sell?

Ans. Nothing said about selling in the first interview.

129 (by same). Have you not talked with Mr. O'Beirne as to what you should testify in this case?

Ans. No, sir; I have not.

130 (by same). Have you not talked with Judge J. M. Layne as to what you should testify in this case?

Ans. No, sir; I have not.

131 (by same). Are they not your attorneys?

Ans. Yes, sir; they are.

132 (by same). Did not Mr. O'Beirne run you off to Virginia and then to Tennessee to prevent your deposition from being taken in this case?

Ans. No, sir; he did nothing of the kind.

133 (by same). Did not you say to me at your second interview almost in these words: "How is it, Mr. Laidley? What interest have I in the land, or how do I have any claim to the land? I sold the land to Mr. Huntington; he paid me the money for it, and how do I have any claim to it?" And did not I answer you again that the deed to Huntington was void; that it was the same as if you had made no deed at all?

Ans. No, sir; you did not. You said under the new constitution I had a dower, and I said the land had been sold to Mr. Huntington and he had paid the money for it and I could not see how I had any dower about it.

134 (by same). Did you not ask me that question after saying that you had sold to Huntington and he had paid the money? Did not you then ask me how you had any claim to it?

Ans. I did not.

135 (by same). Was not the Central Land Company and the C. & O. R. R. Co. at that time generally known to be owned or managed by the same men, or was not C. P. Huntington interested in both?

Ans. I don't know anything about it, but I suppose Huntington was interested in the shops, as well as with the Central Land Company.

135 (by same). Was not Emmet Ferguson about to marry
350 Mollie, and was he not in the employ of the R. R. Co.? Was not your son and nephew in the employ of the same Co., and were they not all boarding with you, and were you not afraid to offend the Co., for fear they would all be discharged?

Ans. I don't know. Emmet Ferguson was not in the employment of the R. R. at the time, but was a —— *butcher* on the *yard*. My son was employed by the railroad company; my nephew was not.

137 (by same). Was your son discharged by the company on account of this suit?

Ans. No, sir.

138 (by same). Did not I have a copy of your deed to Huntington for the land present at our first interview and point out to you the exact defect in the certificate of acknowledgement to you? Did I not tell you it was Tom Hayslip's fault?

Ans. Sir, you did not; you did not mention Thomas Hayslip's name.

The witness here stated that during the recess taken for supper this evening she refreshed her memory with reference to Mr. Laid-

ley's staying all night at her house and taking some meals there at the time of the interviews referred to in *the* this deposition and finds that she was mistaken to the question or questions relating thereto; that Mr. Laidley staid at her house one night and took several meals there.

And further this deponent saith not.

SARAH H. G. PENNYBACKER.

The defendant John B. Laidley excepts to each and every one of the questions and *and* answers thereto asked the foregoing witness, S. H. G. Pennybacker, upon her examination-in-chief, upon the grounds that the same and every one of them are immeterral and irrelevant and illegal upon any issue *any issue* involved in these suits, and by consent of att'ys it was agreed at the time of asking the said several questions that this objection might be indorsed at the foot of these depositions, to have the same effect as if inter*spersed* at the foot of each question.

Cross-questions by J. B. Laidley, Nos. 6, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 61, 62, 63, 64, 65, 66, 67, 68, 69, 79, 80, 81, 82, 83, 84, 90, 91, 130, 131, 132, 135, 136, 137, 138, and the answers thereto, are objected to by counsel for defendant S. H. G. Pennybacker—

1st. Because they are improper and illegal.

2nd. Because they are irrelevant and in no way responsive to the examination-in-chief nor in any way connected with it.

3rd. Because they are improper and *and* in no way admissible on cross-examination.

By consent of all parties these objections are to be regarded and to have the same effect as if made at the time the questions were asked and the answers given.

J. B. LAIDLEY.
J. M. LAYNE.

351 Mrs. MOLLIE FERGUSON, of lawful age, being duly sworn, says:

1. State your name, age, residence, and occupation.

Ans. My name is Mrs. Mollie Ferguson. I am 25 years old. I reside in Huntington, West Virginia, and am a daughter of the defendant S. H. G. Pennybacker, and am acquainted with the defendant John B. Laidley. In 1881 and 1882 I lived with my mother in the Noble property, on 7th Ave., between 9th and 10- street-, Huntington, West Va.

2. Do you remember the circumstances connected with the execution by your mother of a deed to John B. Laidley in January, 1882? If so, state fully what you may know in regard to any representations Mr. Laidley made to your mother in your presence prior to or at the date of said deed, and what those representations and conversations were, if any.

Ans. When Mr. Laidley came he asked ma if she remembered selling the land, and told her that she had a dower under the new

constitution of West Va., and she could make it back again. He wanted her to bring suit, and she told him she could not do it, for she had no money to carry on a suit. Then he wanted to take the suit himself, and if he was successful they should divide it equally; if not, she was to pay him for his services, and she would not do that, for she knew that would take all the money she had. Then he asked her what she would take for her dower. She said most anything, if she had one, and he offered her $500.00, and then when she advised with her friends she finally took the $500.00.

3. Were you present at the time when your mother executed the deed?

Ans. Yes, sir; when Mr. McCullough took her acknowledgment.

4. What did you hear McCollough say to your mother in regard to the deed at the time *her* took her acknowledgment, if anything?

Ans. If he said any I never heard him say more than to ask her if she understood what she was doing. She said, "Yes; I am selling my dower to Mr. Laidley."

5. State whether or not you ever heard Mr. Laidley, in any of his interviews with your mother, state to her that she was entitled to the land in controversy, and that her deed to C. P. Huntington did not, by reason of defective execution, pass any title to Huntington.

Ans. I positively did not.

6. Who was present beside yourself at any of the interviews between your mother and Mr. Laidley in regard to the deed, besides yourself, and how many times was Mr. Laidley at your mother's to see her in regard to the deed?

Ans. My sister, Mrs. Walstrum, and Mrs. Saunders, and I am not sure about my other sister, whether she was or not. Mr. Laidley was there three times to see mother, I think.

7th. State whether or not you ever heard Mr. Laidley tell your mother to consult some of her friends, but not to call in any att'ys.

Ans. He said she could consult any of her friends, but not any lawyer.

(Objected to by Mr. Laidley as being leading.)

352 8. State whether or not your mother acted on this request of Mr. Laidley, and whether or not she ever did consult any att'y in regard to the matter.

Ans. She never did consult any att'y, for she was bound on the honor of a lady to him not to do so. She did talk to some of her friends that I know of, uncle E. T. Mitchell and Mr. Ham Dickey.

9. State whether or not, Mr. Laidley, after he had spoken to your mother about the land matter, made her promise that she would take no legal advice before again seeing him.

(Objected to as leading by Mr. Laidley.)

Ans. He made her promise that she would not see any lawyer at all, for they would take the case away from him.

Cross-examined by JOHN B. LAIDLEY, by said Laidly in person:

1. Please state what room in the Noble house I first met your mother, and when it was, and what time of day was it.

Ans. I think it was in the parlor or front room. I don't remember the date; I don't remember the time of day, either, but it seems to me that it was in the evening.

2. Who was present?

Ans. Mrs. Walstrum and Mrs. Saunders were present. There might of been others, but I don't remember.

3. How long after that was the second interview, and who was present at that?

Ans. I think he came back next day. I think the same parties were present at each time he was there.

4. How long after the second was the third interview, and who was present then?

Ans. I think it was 3 or 4 four days before he came back again. I was present, and I think Mrs. Walstrum and Mrs. Saunders were present, too.

5. Was the last interview the time when Mr. McCullough took you- mother's acknowledgement?

Ans. No, sir; *I* was not.

6. Was I not present when Mr. McCullough took your mother's acknowledgement of her deed to me for the land in question, and who was present then?

Ans. No, sir; Mr. McCullough was by himself. Ma and myself were present; no one else was present when the acknowledgement was taken.

7. Did Mrs. Sanders live there, and what occupation was she engaged in?

Ans. She was visiting our house. She did not live there; her home was in Cincinnati.

8. What was your occupation at that time, clerk in P. O.?

Ans. Washing dishes, I suppose. I was not clerk in the post-office at that time.

353 9. Was anything said by me about your mother selling her land to me for $500 at our first interview?

Ans. No, sir; I think not. He wanted to buy the dower at the second interview.

10. What was said by me and what was said by your mother at each of our three interviews? State all you can remember of each conversation.

Ans. In the first conversation you ask- her if she remembered selling the land to C. P. Huntington. You told her that she had a dower in that land. She said she did not see how she had a dower, because the land was already hers, but he still contended that under the new constitution of West Va. she had a dower, and that is all I remember of the first interview. At the second interview he wanted her to bring suit and she would not, for she said she had nothing to carry the suit on with, and Mace, my brother, was on

the road or in the shop, one. He was employed by the company, anyway, and she feared he would loose his place. Then Mr. Laidley wanted to bring the suit himself, and if they were successful they were to divide the profits equally, and if not she (mother) was to pay him for his services. Then she positively said she would not bring suit, for that would take all the money she had. Then Mr. Laidley asked her (mother) what she would take for her dower, and she said, Most anything, if I have one; and he offered $500.00. She didn't accept then. Then he told her she might advise with any of her friends, but not to go to any lawyer. Then he left. That is all I remember of the second interview. Her friends told her that if he, Laidley, would give her $500 for her dower, as they did not think she had a dower, for her to take it, and the third time he came back she accepted the proposition. At the third interview Mr. Laidley said something of the payments of the $500.00. I think the notes were made at the time. I think he paid $100.00 down and gave a note for the balance, but don't know how the payments were arranged.

10 (by same). Are you certain that at our first interview I told your mother she had a dower interest in the land, as you stated?

Ans. I am certain you told her she had a dower. I remember it very distinctly.

11 (by same). Are you certain that your mother, when I told her that she had a dower, as you say, answered me by saying that she did not see how she had a dower, because the land was already hers?

Ans. Yes, sir; I am certain of that.

12. Did I tell her the deed she had made was void?

Ans. No, sir; you told her nothing about the deed. She never did know anything about it.

13. Did you go with your mother to see E. T. Mitchell when she consulted him or hear their conversation?

Ans. No, sir; no, sir; I never heard the conversation. I never heard the conversation between Arthur Mitchell and my mother, and I never heard the conversation between Ham. Dickey
354 and my mother, and I never heard the conversation between E. T. Mitchell and my mother.

14. You said in answer to my 10th question that her friends told her (your mother) to take the $500 for her dower, and that she had better take the offer of $500. How can you testify what they said if you have not been instructed what to say on that subject?

Ans. I know what they said, for I have heard them speak of it since, for one thing. I didn't hear her conversation with them, but I have heard them tell it since. I have heard ma speak of it since.

15. Have you ever talked with Mr. O'Beirne about what you would testify to in this case?

Ans. No, sir; Mr. O'Beirne would not know what you were going to ask me any more than you would.

16. Did not you tell Mr. O'Beirne that I told your mother she had a dower in the land?

Ans. I don't remember whether I did or not. I don't think I ever did. Everybody I talked to about it, I told them that you (Mr. Laidley) had said mother had a dower in it.

17. Did you ever talk to Mr. O'Beirne about this case?

Ans. I said I didn't.

18. Do you remember when Mr. O'Beirne called at your mother's house and talked to her about her case? Please state what was said and when he called.

Ans. I don't think he called at all. I think she called on Mr. O'Beirne. I was not present. I am boarding with my mother now. I have only been boarding with her since she came back from Knoxville, Tenn.

19. Did your mother tell you what she would swear?

Ans. No; she did not tell me what she would swear. She did not know what you was going to ask her. She was going to swear the truth.

No. 20. Where were you when McCullough took the acknowledgment—in the room? Were you standing, sitting, and what corner did you occupy?

Ans. I was in the room; don't know what position I occupied; don't know whether I was standing or sitting; suppose I was sitting.

21. You say it was in the front room. What position in the room did your mother — in the room?

Ans. I don't know that either.

22. Did your mother sign the deed there when she acknowledged it?

Ans. She signed it before Mr. McCullough, if signing it there is acknowledging it. Yes, sir; I suppose she did, as far as I remember.

23. Was Mr. McCullough standing or sitting when he took the acknowledgment of the deed?

Ans. I don't remember.

355 24. Was your mother standing or sitting when she acknowledged the deed?

Ans. When she signed the deed she was sitting. I don't know what acknowledging the deed is, and I don't answer till I know. I thought signing the deed was acknowledging.

25. When Mr. McCullough asked her if she understood the deed and took her answer to that question, was your mother standing or sitting?

Ans. I don't remember whether she was standing or sitting. I never took any note of their positions.

25. Do you remember his, McCullough, asking your mother that question—whether she understood what she was doing? And state her answer.

Ans. Yes; I remember that she said, Yes, I am selling Mr. Laidley my dower.

No. 25. Was there a table in the room? If so, where?

Ans. Yes, sir; it was in the corner of the room, setting "cota-

cornered." I don't know which corner of the room—whether it was in the north, south, east, or west corner.

26. Is there not an east window of the room?

Ans. Yes, sir; there is.

27. Is it in the middle or in the north or south corner?

Ans. It is right in the middle of the room, in the east side.

28. Was not the table right against the wall, in front of the window, when Frank McCullough took the acknowledgment of the deed?

Ans. No, sir; the best I remember, the table set catacornered across the room.

29. Was the table square or round? Did it not set square against the wall?

Ans. It was a square table and did set square against the wall; it set crosswise in the corner.

No. 30. Will you swear that McCullough was not standing when he took the acknowledgment?

Ans. I won't swear to nothing. I won't swear to that, for I don't remember whether he was standing or sitting.

No. 30. Can you say when it was?

Ans. Can't remember the day nor the time of day it was.

31. How can you remember so well what he said, what your mother said, and can't remember the position of a single individual in the room, there place, or the time of day it was?

Ans. I remember what he said because it was important and something particular. To remember the time and the positions or place we were sitting was simple, and there was no motive for remembering it to tax your memory with it.

32. You know your mother told him she only sold her dower and acknowledged the deed for the purpose of conveying dower?

Ans. Yes; I know that she told him that she was selling Mr. Laidley her dower.

33. Where was I sitting or standing when she acknowledged the deed?

356 Ans. I could not tell you where you were when she signed the deed; you were not there. I don't know anything else to answer.

34. Where was I in the room when she acknowledged the deed?

Ans. You were not there when she signed the deed. If signing is acknowledging, you were not there.

35. Does Mr. McCullough testify falsely when he says I was present when he took the acknowledgment?

Ans. I don't think Mr. McCullough would tell a story about it, but he must have forgotten and don't remember.

36. Did your mother tell Mr. Arthur Mitchell that I had told her her deed to Huntington was void, and that I could recover the land for her?

Ans. If she did I never heard her, and I don't think she did.

37. If Mr. Arthur Mitchell testifies she did, does he swear true or false?

Ans. I would not say that Arthur would tell a story either, but if he says so I think he has forgotten.

38. What is dower?

Ans. The way I understand it is property that your husband would own and die and his widow would have a dower in it.

39. Did you understand it that way when Mr. McCullough took your mother's acknowledgment of the deed in this case?

Ans. I understood that. That is what you said she had and ma said she did not have.

40. Did not I tell your mother at our first and second interviews that I would bring her the written opinion of the ablest att'ys in the State to the effect that her deed to Huntington was void?

Ans. No, sir.

41. Did I tell your mother to consult attorneys at our first and second interviews, but not to give her suit to another att'y after I had told her about it?

Ans. You told her to advise with friends and not go to a lawyer. You told her not to consult any lawyer.

42. Your mother knew that she owned the land under Mrs. R. J. Everett's deed, did she?

Ans. I don't know anything about that.

43. Did your mother tell me in my first interview with her she owned the land?

Ans. She told you at your first interview, I think it was, that she could not see how she had a dower when the land came through her.

44. Did not she tell me that she could not see how she could have dower in her own land?

Ans. She told you (Mr. Laidley) that she could not see how she could have dower in land that came through her, and you still persisted that under the new constitution that she had a dower.

45. Did your mother believe me when I insisted that she had the whole interest in the land and that the deed was void and she could recover it? Did she have any faith in what I told her, whatever it was?

357 Ans. She did not know anything about the deed, for Mr. Laidley told her it was a dower, and she had no faith in that, and she thought if he (Mr. Laidley) could make her dower she would take the $500.00 for it. He told her nothing about the deed.

46. Did not I urge her to sue and I to have one-half and she one-half if she gained the suit, and did she not take the advice of her friends and not my advice?

Ans. You wanted her to sue, and, if successful, to divide equally; and, if not, she was to pay Mr. Laidley for his services, and she would not sue because she knew that would take all the money she had. She took her friends' advice and did not take your advice.

47. Did not I tell her I would lend her the money to conduct the suit if she would sue?

Ans. No. You said you would carry the suit on, and if success-

ful we will divide equally; if not, she was to pay you for your services.

48. When did your mother consult Mr. Dickey after our first, second, or third interview, and were you present?

Ans. I was not present. It was after the second interview. She accepted your proposition at the third.

49. Did you ever hear Mr. Dickey say anything about it in your mother's presence?

Ans. No, sir.

And further this deponent saith not.

MRS. MOLLIE FERGUSON.

HAMILTON DICKEY, a witness of lawful age, being duly sworn, says:

1 Ques. State your name, age, residence, and occupation.

Ans. My name is Hamilton Dickey. I am 43 years old. I reside in Huntington, W. Va.; have so lived there since 1871, and am acquainted with the defendants John B. Laidley and Sarah H. G. Pennybacker.

2. Where did you live in December, 1881, and in January, 1882?

Ans. I lived on 7th (south side), *been* 9th and 10th street-, and next door to Mrs. Sarah H. G. Pennybacker.

3. If you remember having any conversation with Mrs. Pennybacker in regard to any dealings between her and John B. Laidley in 1881 or 1882 please state what it was.

Ans. I could not be positive whether it was in 1881 or 1882. Mrs. Pennybacker called into my house one evening and asked me in reference to some business that she was then having with Mr. Laidley. She said that Mr. Laidley had come to her and wanted to buy her dower in a certain piece of land and she wanted my advice about it. She said Mr. Laidley had offered her $500.00 for it and if successful he would give some of the girls (he mentioned Minnie's name) a lot. I told her that she could do as she pleased about it; that I did not see where she had any interest in the land; if Mr. Laidley would give her $500.00 if I were in her place I would
358 accept, and she said she believed she would. The conversation then turned onto something else and nothing more was said about it—not at that time.

4. What land was it that she referred to and did she tell you how Mr. Laidley stated to her she was entitled or why she was entitled to dower?

Ans. I understood it to be the farm owned by John Pennybecker and sold to C. P. Huntington about the time the town started. I don't know that she told me that he told her how she had a dower in the land, but she said that Mr. Laidley said that she had a dower in the land.

(Cross-examined by J. B. LAIDLEY:)

1. When did John M. Pennybacker die, and was he the husband of S. H. G. Pennybacker?

Ans. I have forgotten. I laid him out and put him in his coffin. He was the husband of S. H. G. Pennybacker. It always occurred to me that it was in July, 1881. I did not tax my mind with it and it has slipped my mind.

2. Why did you tell Mrs. Pennybacker that she had no interest in the land?

Ans. I did not think she had any. She had sold the land and I could not see how she had any interest in it. She said they had conveyed the land to the Central Land Company.

3. Did you know anything about their sale of the land to Huntington or the company, except what she told you?

Ans. No, sir; I did not.

4. Did you ask her how I claimed she had dower or any interest in the land?

Ans. No, sir; I don't think I did.

5. State if she told you that I said that the deed that they had made to Huntington — the company was bad or defective, and that I could set it aside and recover the land for her, or anything of that sort.

Ans. No, sir; she never told me anything of that kind.

6. Did you tell her to ask me how she had any interest in it, and why not?

Ans. No, sir; simply because I could not see how she had any interest, and I thought it was $500.00 for her.

7. You were her next-door neighbor and pretty intimate with the widow, were you not?

Ans. Not any more so with her than with the rest of the family. She generally came to me for advice. We were very friendly.

8. Was that after the first interview I had with her?

Ans. I think it was after the second.

9. What makes you think so?

Ans. Because my recollection is after your first interview with her she spoke to me in reference to Mr. Laidley calling on her and wanting to buy her chances in her dower in the land. That was one evening when I was on my portico and she was over in her yard. There was no further conversation that evening in
359 reference to it, because after you had made your second visit Mrs. Pennybacker came to me to ask my advice in reference to the matter of selling.

10. What did she say when she hollowed over?

Ans. She said she had had a call from you in reference to your (Laidley) buying her chances or dower in that land sold to the Central Land Company.

11. What chances did she refer to?

Ans. I did not know at that time, sir, what chances she referred to.

12. Have you not talked with me about the suit I had brought, and have you not known since the trial of the action in ejectment between me and the company that I had brought suit for the whole land in fee-simple, and did you ever tell me that Mrs. Pennybacker

had talked to you about selling her chances for the land in her dower in the land?

Ans. Yes, sir; I have talked with you about the suit. You told me you had sued for the whole land, and that it was a defective deed, and also Mrs. Pennybacker had talked to me about selling her dower to the land. I have talked with Mr. Laidley since the action in the circuit court about the case. He informed me that he had sued for the whole tract of land; that the deed was defective. I don't think I ever told you what Mrs. Pennybacker said to me.

13. If you had advised her to sell her dower and I told you I had sued for the fee-simple, why did you not ask me to explain how that happened?

Ans. Because I did not think it was any of my business.

14. Did you not ask me on the street one day if there was anything in that suit for her?

Ans. I don't think I did.

15. Did you not ask me if there was anything in it—meaning if I was sure of gaining it?

Ans. Yes, sir; and your answer was, All the devils out of hell could not keep me out of it. We had several conversations at different times about it. I was asking you about it. The reason was I thought Mr. Laidley was slinging away $500.00 recklessly.

16. You have had good many business transactions in dealings with me, have you not; and you were a witness for me in the trial of the ejectment case against the company, were you not?

Ans. Yes, sir; to both questions.

17. Was it your impression that Mrs. Pennybacker had any interest in the suit if I gained it?

Ans. No, sir; she told me that Mr. Laidley would give her $500.00 for her dower in the place, and if he gained the suit he would give either lot or lots to the girls; I won't say. There was one of the girls Mrs. Pennybacker mentioned distinctly; that was Minnie.

18. Now, Mr. Dickey, please state if you advised Mrs. Pennybacker to sell to me her dower in the land without enquiring of her how I claimed she had a dower in the land.

Ans. After asking her some questions I advised her to sell Mr. Laidley her dower. I asked her if she and Mr. Pennybacker
360 had sold and conveyed the land by deed to the Central Land Company. She said yes, and I said, that being the case, if Mr. Laidley wanted to purchase her interest or dower that he might think she had in the land, to sell it to him; that is what I would do if I were in her place. I asked her on what grounds Mr. Laidley claimed that she had a dower in the land. She said that he told her under the constitution of West Virginia that she had the dower.

19. Why did you tell Mr. Enslow, in answer to his last question (No. 4), that you did not know that I told her how she had dower in the land?

Ans. I don't know that I understood Mr. Enslow's question, because she came over that language in reference to the constitution

of the State allowing her dower in the property two or three different times while I was eating my supper. For my limited knowledge of law I could not see where she had any dower in the land. Where I said "for" I mean "with" my limited knowledge of law.

20. Do you mean to say that you do not understand this language in Mr. Enslow's question? Did she tell you how Mr. Laidley stated to her she was entitled or why she was entitled to dower?

Ans. I don't mean to say I don't understand it now, but I do mean to say I did not understand it at the time I answered the question.

21. Then this answer of yours to that question is not true, is it? I don't know that she told me that he told her how she had a dower in the land.

Ans. I just said I did not understand the question at the time.

22. What did you mean when you said "I don't know that she told me that he told her how *how* she had a dower in the land"?

Ans. I said I did not understand Mr. Enslow's language at that time.

23. Did that satisfy you when you advised her that I told her she had a dower under the new constitution? Did you imagine that I had advised her as a lawyer that she had a dower in her own land under the new constitution?

Ans. It did not satisfy me that she had a dower. No, sir; it did not satisfy me that he had advised her — a lawyer that she had a dower under the new constitution. I advised her just the same to go ahead and sell it to him for the sum she said he had offered her for it.

24. Did you so advise her without enquiring into it to satisfy your own mind whether she had a dower or other interest?

Ans. I had advised her after I had asked her question in reference to the conveyance of the land to the Central Land Company or C. P. Huntington to sell Mr. Laidley the dower which he claimed she had, for knowing the virtue of a deed I could not see where she had any interest in the land at all.

25. She did not say that I claimed the deed she made was bad?

Ans. She did not tell me.

26. If I had offered you $500.00 for land you had sold and conveyed, knowing you had so sold and conveyed, saying you
361 still had an estate or interest, notwithstanding your deed, would you take it without enquiring how I expected to recover the land in or interest?

Ans. I certainly would if I had made a warranty deed.

Cross-examined by J. M. LAYNE, att'y for S. H. G. Pennybacker:

1. What official position, if any, did you hold at the time of the interviews you had with Mrs. S. H. G. Pennybacker in reference to the land in controversy touching the sale of her dower?

Ans. I don't think I held any at that time.

2. What position did you hold after that?

Ans. I was mayor of the city of Huntington.

3. What business have you since been engaged in?

Ans. I have been engaged in the furniture and undertaking business.

4. What, in your opinion, was the value of the 240 acres of land in controversy at the time Mrs. Pennybacker conveyed it to J. B. Laidley, in 1882?

Ans. I should say, in my opinion, that it is worth $25,000.00.

5. What was the land worth at that time according to the Central Land Company's schedule of prices for city lots?

Ans. Worth $364,000.00 (three hundred and sixty-four thousand dollars) or thereabouts.

5. What would you estimate the improvements on that land at that time worth at a rough estimate?

Ans. I would *secure* the improvements, taking all of these to be worth about twenty thousand dollars or thereabout.

6. Then, was not your first estimate of $25,000 rather low?

Ans. Yes; it was low. I was basing that estimate upon it as farm property and not as town lots.

7. Is this property laid off in town lots, or do you know?

Ans. I think a portion of it is laid off in town lots, and some of the lots have been sold by the Central Land Co.

8. In estimating the value of the land according to the land company prices, did you make your estimate upon the entire tract or a part of it?

Ans. Only on that part of the land lying on the river bottom. I did not take into consideration the hill land.

Cross-examined by J. B. LAIDLEY:

Ques. If the land was worth three hundred and sixty-four thousand dollars, why did you advise Mrs. Pennybacker to sell for $500.00?

Ans. Simply from the fact that, having questioned Mrs. Pennybacker in reference to the conveyance of the land to Central Land Company, I was satisfied in my mind that she had no dower in the land.

Ques. What will the land bring in market with the condition of the title at this time?

Ans. I don't know, sir.

362 Ques. Would you buy it from Mrs. Pennybacker now at any price?

Ans. No; nor not from you, either.

Ques. What is the rental value per acre for farming purpose?

Ans. I think the bottom land rents for five dollars per acre. The hill land won't rent for much; perhaps the hill land would rent for $2.00.

And further this deponent saith not.

HAMILTON DICKEY.

MINNIE WALSTRUM, a witness of lawful age, being duly sworn, says:

1. State your name, age, residence, and your relation to the parties to this suit.

Ans. My name is Minnie Walstrum. I am 21 years old. I reside in Charlottesville, Va. I am a daughter of Mrs. S. H. G. Pennybacker, and I am acquainted with the defendant John B. Laidley.

2 (by same). Where did you live in the years of 1881 and 1882?

Ans. In Huntington, on 7th Ave., with my mother. I was then unmarried.

3 (by same). State whether or not you remember of John B. Laidley having any business transactions with your mother in regard to any real estate in the city of Huntington; if so, state what it was and if you remember when.

—. I remember of his coming to see my mother in 1882 and told her she had a dower in the property that my father sold. He told her under the new constitution she had a dower and wanted to bring suit for it. He wanted to bring suit, and if he got it he was to give her half. They were to divide it equally, and if he did not get it she was to pay him for his services.

4 (by same). Where did this conversation between your mother and John Laidley occur, and who was present?

Ans. It occurred in our house, and my sister, Mrs. Ferguson, Mrs. Saunders, my mother and myself were present.

5 (by same). What land was it to which Mr. Laidley referred, and what did your mother tell him in regard to the claim for dower which he stated she had in the land?

Ans. It was the land my father sold to Mr. Laidley's father, and is the land below 7th, and which land was sold to C. P. Huntington—the land in controversy in this suit. My mother told him she did not think she had a dower, but he told her under the new constitution of West Virginia she had a dower.

6 (by same). What did your mother finally agree to do in the matter, and what did she do?

Ans. She agreed to sell her dower, if she had one, for $500.00. She sold her dower for $500.

7 (by same). Were you present when your mother executed the deed to John B. Laidley?

Ans. No, sir; I never saw any deed nor ever heard of one.

363 8 (by same). What, if anything, did you hear Mr. Laidley say to your mother during these negotiations in regard to her not *cul*sulting an attorney?

(Ques. objected to by Mr. Laidley as leading.)

Ans. He bound her *bound her* up on the honor of a lady not to see an att'y, but could advise with any friends.

9 (by same). How many times was Mr. Laidley at your house before your mother sold, as you say, her dower interest, and at how many of the interviews were you present?

Ans. He was there three times before she accepted his proposition. She accepted the third time, and I was present at all three of the interviews.

10. Did you hear Mr. Laidley state to your mother, during any of these interviews, anything in regard to the reason why she was entitled to dower, notwithstanding the deed to C. P. Huntington?

Ans. He told her under the new constitution of West Virginia she had this dower.

11 (by same). Mr. Laidley states in his deposition that he told your mother that the deed to C. P. Huntington, under which the Central Land Company claims title to the land in controversy, was not worth brown paper, and that she absolutely owned the land. Did you hear him make such a statement to your mother at any time during the negotiations between them?

Ans. No, sir; he did not tell her one word about any deed.

12 (by same). Were you present at the last interview between your mother and Mr. Laidley at which she agreed to take $500.00 for her dower interest?

Ans. I was.

13 (by same). Are you acquainted with Frank F. McCullough, the notary public who took your mother's acknowledgment of the deed to John B. Laidley to the land in controversy; and, if so, do you remember the occasion on which he came to your mother's house to take the acknowledgment? Where were you at the time, and who was with him when he (McCullough) came to the house?

Ans. I am slightly acquainted with him. I remember the occasion. I saw him come into the gate on the side of the house. I was on the side porch of the rear of the house. I saw no one with McCullough.

Cross-examined by JOHN B. LAIDLEY:

1. When were you married, Mrs. Walstrum?

Ans. I was married the 24th day of October, 1882.

2 (by same). Was Mr. Walstrum in the employ of the C. & O. R. R. Co. in Jan'y, 1882?

Ans. I don't know; I did not know Mr. Walstrum but a short time before I was married.

3 (by same). How long did you know him before you were married?

Ans. I knew him three weeks.

364 4. Was he in the employ of the Co. at the time you met him and boarding at your mother's?

Ans. Yes, sir; when I first met him he was in the employ of the company; he was boarding at my mother's.

5. Had he only boarded there three weeks before you married him?

Ans. Yes, sir.

6. Where were you married?

Ans. I was married at Ironton, Ohio.

7. Did you have the written consent of your mother to your marriage?

Ans. I don't know whether I did or not. I won't be positive about written consent, but I know I had the consent.

8. Did you tell the clerk who gave the marriage license what your age was?

Ans. I did not see the clerk.

9. Do you know how you got license to marry in Ohio, not being over 18 years of age?

Ans. I know nothing about it.

10. Why did you not go to the county clerk in Barboursville, W. Va., for licence to marry?

Ans. I preferred going to Ironton.

11. Did your mother go with you?

Ans. No, sir.

12. Did she know when you started?

Ans. Yes, sir.

13. What was your age in January, 1882, and how do you know that it was in Jan'y, 1882, I came to see your mother about the land in question?

Ans. I was 15 years old in 1882. I did not say it was in January 1882; I said it was in 1882.

14. How do you know it was in 1882?

Ans. Because I was 15 years old in 1882, and I was married in 1882, and it was some time before I was married that you came.

15. Please state all you can remember of the 1st, 2nd, and 3rd conversations between me and your mother about the land in controversy.

Ans. Mr. Laidley came there and wanted to see my mother on business, and he saw her and asked her if she remembered about the land she sold—at least my father sold—and she told him she did, and he told her she had a dower in that land, and she told him the land was hers and she did not think she had a dower in it, and he says, Under the new constitution of West Va. you have a dower in it. He wanted her to bring suit for this dower interest, and she told him she would not do it. Mr. Laidley said if he gained it they would divide equally; if not she was to pay him for his services, and she told him her home or her farm was all she had and she would not do it. I won't be positive whether he wanted to buy the dower at that time or not. I think it was the second interview he wanted to buy the dower.

16. Is that all you can remember of the first interview?

365 Ans. I think it is, but I won't be positive.

17. When was that conversation? In which room? Who was present?

Ans. I won't be positive what room it was, but it was in our house, and I think most of the conversation took place in the front room. Mrs. Saunders, Mrs. Ferguson, and mother, myself, and Mr. Laidley were present.

18. Did I call to see Mrs. Saunders?

Ans. No, sir; you did not; you called to see my mother. You are not acquainted with Mrs. Saunders, that I know of.

19. Was Mrs. Saunders your mother's business agent or guardian?

If not, what did she come into the front room or parlor to see me for when I called for your mother?

Ans. It was customary for us to take our visitors into the parlor when any one called, where we all went in, whether they came on business or not. We did not like to leave our visitors alone.

20. Was Mrs. Saunders a young lady and unmarried at that time?

Ans. She was a widow.

21. What was her name and age?

Ans. I don't know her age; she was a Mrs. Sidel.

22. State all you remember of the second interview between me and your mother.

Ans. At the second interview Mr. Laidley called and asked my mother if she would not bring suit, what would she sell her dower interest for, and she told him she did not know, and he asked her if she would take $500.00 for it, and he told her she might go to any of her friends and advise with them, but bound her upon the honor of a lady not to go to see a lawyer or get any legal advice at all; but she did not accept the $500.00 at that interview before she advised with any of her friends. I don't think there is any more that I can remember of at that interview.

23 (by same). When did that interview occur? In which room? Who was present?

Ans. I am not positive in what room it occurred. It occurred at our house; I won't be positive of any more. Mrs. Saunders, Mrs. Ferguson, my mother, Mr. Laidley, and myself were present.

24. Did I call for Mrs. Sanders at the second interview; and, if not, why was she present at a business transaction between me and your mother?

Ans. No, sir; you did not call for her, but she just happened to be there as she happened to be there the first time. Mr. Laidley did not ask to see my mother privately.

25. Had not Mrs. Sanders or Mrs. Sidel just come to your house from Cincinnati on a visit, returning home with your mother, who had been on a visit to Cincinnati?

Ans. No, sir; my mother had been on a visit to Cincinnati, and I don't remember whether she came back with her or not.

26. When did Mrs. Sidel come? Did you not just say she came after your mother returned?

366 Ans. I did not say she came after my mother returned, but think she came before and stayed with us while my mother was gone to Cincinnati.

27. What is all you remember of the third interview between me and your mother, and where did that occur?

Ans. All that there was about the third interview, my mother accepted the $500.00 for her dower. That is all there is of it, and that is all I remember. It occurred at our house. I am not positive about the room. It occurred downstairs.

28. Was Mrs. Sidel present at the last interview?

Ans. I am not certain about that. I would not — she was, and

I would not — she was not. Mrs. Ferguson and myself were present.

29. Did Mrs. Sidel have a room upstairs where she stayed most of the time?

Ans. No, sir; she had her room upstairs, but she stayed downstairs where we were most of the time.

30. Are you positive that I asked your mother, at our first interview, if she remembered the land her late husband, John M. Pennybacker, had sold to C. P. Huntington, and that I did not ask her if she remembered the land she herself had sold to Huntington—which did I say?

Ans. I think you said the land sold to C. P. Huntington. I could not be positive about the matter.

31. Did I say that the land had been your father's in his lifetime?

Ans. No, sir; I don't think you did. I think you knew the land was my mother's, and you could not well say it was my father's.

32. Did I say that your mother was entitled to dower on account of your father's death?

Ans. I could not say positive about that.

33. Did I tell your mother that she owned the land or did I tell her that your father owned it; which did I tell her?

Ans. I would not say that you told her anything about whether either of them owned it.

34. Did I tell her she could recover the land?

Ans. You did not.

35. Did I tell her she could recover her interest in the land?

Ans. You did not. You did not say anything about interest. You said you could recover her dower in the land.

36. You are positive you do not rem-ber anything else than what you have stated that was said at these interviews?

Ans. I did not say I was positive; that is all I think of.

37. What was said about your mother's deed to C. P. Huntington for the — either by me or her, if anything?

Ans. Nothing was said about any deed at all.

37. Are you positive of that?

Ans. I am positive that there was nothing said about any deed.

38. Neither by me or by your mother?

Ans. By neither.

367 39. Did your mother say she had sold the land to C. P. Huntington in any of our interviews?

Ans. I can't be certain about that.

40. What is your recollection about it?

Ans. I don't remember anything about that.

41. Why did you not take Mrs. Sidel in to see Mr. McCullough when he took your mother's acknowledgment of the deed to me, and why was not she present?

Ans. I was not present myself. Mrs. Sidell might have been out calling some place.

42. When did your mother visit you in Albemarle Co., Va.? How long did she remain?

Ans. I don't remember exactly. She did not stay very long. I don't remember how long she stayed.

43. Did she talk anything about me and the land she had sold me in Huntington, W. Va., when she was at your house?

Ans. Not that I remember.

44. Did you tell her what you remembered about it when she visited you?

Ans. I have just told you we did not talk of it, as I remembered.

45. Did you ever write and tell her what you would swear, or did you ever tell her before you left her; and when did you leave her and go off with your husband?

Ans. I think I staid at home about a couple of months after I was married, and then moved to Richmond, Va. I never wrote her, nor I never told her before I went away what I would swear.

46. When did your mother visit you in Richmond and how long did she stay?

Ans. She never visited me in Richmond.

47. Did you ever talk with any one as to what you remembered of the conversation between me and your mother?

Ans. I suppose I have; I don't remember. I know I talked with my husband's father. I told him that Mr. Laidley said she had a dower under the new constitution of West Va. He said if she had any dower it was very different from the laws in east Va.; that if she had any claim at all on it there must be something wrong with the deed.

48. Did you ever talk with your husband about it?

Ans. Yes, sir; I have talked with him.

49. Where was your father-in-law when you talked with him about it? When was it? How came you to mention it to him?

Ans. At my home in Charlottesville, Va. I don't remember the time. I don't remember how I came to mention it to him. No one was present that I remember.

50. What is dower?

Ans. An interest coming through your husband when he owns property.

51. Have you any objections to stating what you just said as to the interest a wife has in her own property?

368 Ans. I don't understand that; can't answer anything I don't understand.

52. Did you just now say that a wife can't have dower in her own property?

Ans. I said I didn't know. I say I don't believe she could.

53. Did Judge Layne and Mr. O'Beirne not tell you that the first part of your answer to question 50 was enough; that you need not add what you said about a wife's own property?

Ans. Mr. O'Beirne did not say anything but what he said out loud, and he said that to you, and that was all I heard them say. I did not hear Judge Layne say anything. I only heard Mr. O'Beirne say that I had said enough; that I had answered the question fully.

54. Were you at Barboursville at the time of the trial between me

and the land Co.? How much do you think your mother will gain of the land if she beats me in the suit she has brought against *to* me — recover the land she deeded to me?

Ans. I was not at the trial. I did not know that she deeded any land to you. I thought she deeded a dower to you. I don't know anything about how much she is going to gain.

55. She has sued me for the land, has she not?

Ans. I don't know anything about it.

56. Did you ever hear her say that she intended to sue me to set aside the deed she had made me?

Ans. No, sir; I never heard her say anything of the kind.

57. Did you ever hear her say I had cheated her out of the land or anything of the kind?

Ans. Yes, sir; I have frequently since she found it out.

58. When did you hear her say that?

Ans. I don't know exactly when.

59. Was it before you were married?

Ans. No, sir; it was after Mr. O'Beirne told her.

60. When did he tell her? How do you know he told her?

Ans. I heard her say he told her. I guess she would not tell a story about it. I would not be positive when he told her, for I don't know.

61. Have you been to Hunton since you left in 1882?

Ans. Yes, sir. I don't remember exactly when; I have been back several times. I have not been back in the last three years, except last summer. I think it was in August, but I am not certain of the month.

62. You say you were here last summer. Was your mother here then? Did you see her on your visit here?

Ans. No, sir; she was not here. She was down South; she was at Knoxville.

63. Now, when did you have a conversation with her in which she said I cheated her? Was it more than three years ago, and where was it?

Ans. I don't remember when it was, and I don't remember where it was.

369 64. Was it at Richmond, Va., or Charlottesville, Va., that you heard your mother say I had cheated her?

Ans. I said I did not remember where or when it was.

65. Have you seen your mother anywhere else within the last three years, save at Richmond, Va., or Charlottesville, Va.?

Ans. I never did see her at Richmond, Va. No, sir; I have not seen her anywhere else except at Charlottesville until I came here day before yesterday.

66. You said, in answer to question 43, that your mother did not — anything about me and the land she had sold at her visit to you at Charlottesville, Va. Is your answer to that question true?

Ans. It is true as I remember.

67. Then your mother did not say to you or in your presence, while she was at Charlottesville on her visit to you, that I had cheated her, did she?

Ans. I said she did not talk to me as I remember.

68. The conversation which you refer to, in which you say your mother said I had cheated her, occurred more than three years ago, did *they* not?

Ans. I said I did not remember the time or place.

69. If it did not occur at Charlottesville, and if you have not seen your mother for three years, except when she visited Charlottesville, it must have occurred prior to three years ago.

Ans. I don't remember when it occurred nor where it occurred. It must have occurred at Charlottesville, but I don't remember.

70. Then your answers to question 43 and to question 66 are not true, are they?

Ans. They are as true as I remember.

71. Are you positive now that you heard your mother say that I had cheated her?

Ans. Yes, sir; I have heard her say you cheated her.

72. Do you know when Mr. Gordon O'Beirne first talked to her on the subject?

Ans. No, sir; I do not.

(By J. M. LAYNE, for Mrs. Pennybacker:)

73. Were you present when Mrs. Pennybacker and Mrs. Ferguson testified in this case?

Ans. No, sir.

74. Where were you at that time?

Ans. I was in Charlottesville when mother testified. I got here the day Mrs. Ferguson testified.

75. Do you know what they testified to?

Ans. No; I do not.

Recross by JOHN B. LAIDLEY:

What do you suppose the land is worth in controversy?

Ans. I have no idea.

Is it worth, do you suppose, as much as $50,000, or has any one told you what it is worth?

370 Ans. I have no idea. No one has told me what it is worth.

Did you come out here from Charlottesville to testify in this case?

Ans. I came on a short visit.

Did you hear Mr. O'Beirne suggest that you came on a visit?

Ans. Yes; I heard him suggest that I came on a short visit, and that I came both to visit and to testify.

Did I tell you I would give you a corner lot when I gained my suit against the company at the time I got my deed from your mother?

Ans. At the time you bought the dower you said you would give me a lot, but I don't remember you saying any — about a corner,

but I did not expect to get anything, because I thought you were joking.

And further this deponent saith not.

MINNIE WALSTRUM.

(Notary certificate omitted.)

The following deposition was taken on behalf of plaintiff at the residence of Mrs. M. E. Sanders, in the city of Huntington, in the county of Cabell, in the State of West Virginia, and filed the 23 day of January, 1888.

(Caption omitted.)

Present: J. B. Laidley and F. B. Enslow, for pl'ffs, and Gordon O'Beirne and J. M. Layne, for def'ts.

Mrs. M. E. SANDERS, a witness of lawful age, being first duly sworn, deposes and says:

1. State your name, age, and residence, if you are acquainted with the defendants, Mrs. S. H. G. Pennybacker and John B. Laidley.

Ans. Name, M. E. Sanders; 36 years old; Huntington, West Virginia. Yes, sir; I am acquainted with Mrs. S. H. G. Pennybacker and slightly acquainted with John B. Laidley. I first became acquainted with Mrs. S. H. G. Pennybacker in 1881, the year her husband died.

2. State when you first met John B. Laidley, and the occasion of the meeting, and what business he was then transacting, and with whom was he negotiating, and for what.

(Objected to by defendant Laidley as leading.)

Ans. First met him on 7th avenue, at Mrs. S. H. G. Pennybacker's residence, the winter following the death of her husband. He came to transact this business about her property or her dower. I believe he stayed all night at her house at that time. I do not know whether he transacted any business the first night he was there or not.

3. State whether or not you were present at any interview had between John B. Laidley and Mrs. S. H. G. Pennybacker in regard to the land in question in this suit. If so, state all you may
371 remember of the conversation between Mr. John B. Laidley and Mrs. S. H. G. Pennybacker, and fully what occurred there and when.

Ans. Yes, sir; I was present at several of the interviews between John B. Laidley and Mrs. S. H. G. Pennybacker. I could not say that I was present at all the interviews between John B. Laidley and Mrs. S. H. G. Pennybacker. The conversation I heard occurred at Mrs. S. H. G. Pennybacker's house. It was the visit I made at her house the year her husband died. I can't say exactly the time he went there and wanted her to bring this suit against the land company for her dower. She told him she had no dower. He told her he would bring suit for her if she would let him, and she told him she couldn't bring any suit; she had nothing to bring a suit with;

besides, it would throw her son Mason out of employment, who was working for the company at that time, and said, besides, she had no dower to sue for, and he said she had according to the new constitution of West Virginia. He said, then, that he would bring the suit and if he gained it for her he would divide, and if he lost it she was to pay him for his services. She then told him she coulden't possibly do that, but if he lost it he could take her farm, which was all she had to pay him for his services in case he lost it; that is what she meant. I believe that is all I remember of *of* importance. I returned to the city shortly afterwards.

4. State whether or not you heard Mrs. S. H. G. Pennybacker tell Mr. John B. Laidley at any time that she had sold the land in controversy to C. P. Huntington or to the Central Land Company, and that she had then no claim to it.

(Objected to as leading by defendant Laidley.)

Ans. Yes, sir; I heard her tell him that. There was quite a little argument on that at the time.

5. Did you hear Mr. Laidley make any request of Mrs. S. H. G. Pennybacker in regard to her consulting any person in regard to her interest in the land? If so, what was it?

Ans. Yes, sir; I did. He told her that he woulden't allow her to go to any legal adviser, but could go to any intimate friend that she wanted.

6. Were you present at the time Mrs. S. H. G. Pennybacker agreed to execute a deed to John B. Laidley? If so, what did Mr. John B. Laidley state to Mrs. S. H. G. Pennybacker?

Ans. I was not present; at least I coulden't swear that I was.

7. Were you present at the time Mr. John B. Laidley offered to give Mrs. S. H. G. Pennybacker $500.00 for her land or for any interest in the land in controversy?

Ans. I was there when he offered her $500.00 for her dower.

8. At that time did you hear Mr. John B. Laidley tell Mrs. S. H. G. Pennybacker that she was the absolute owner of the land in question?

Ans. No, sir; I did not.

9. At that or any other time did you hear him state to her that the deed which she and her husband had executed to C. P. Huntington for the land was not worth brown paper?

372 Ans. No, sir; I did not hear that at all.

(Cross-examined by JOHN B. LAIDLEY:)

Please state, when you returned to Covington, Ky., from Mrs. Pennybacker's, at the time you speak of, how long you stayed at Mrs. Pennybacker's and when you came up to visit her.

Ans. I returned back in March, in 1882, I think it was; it must have been; it was the year after her husband died. I stayed from December until March on that same visit. It was in December after her husband died that I came up to visit her.

2. Were you a very warm friend of Mrs. Pennybacker's at that time and now?

Ans. Yes, sir: a great deal more intimate then than we are now.

3. Has anything occurred to interfere with the current of your friendship since that time?

Ans. Nothing at all.

4. You were not present at all of the conversations between me and Mrs. Pennybacker during our negotiations about the sale of the land in question. Please state if you were present at three of the interviews we had about the matter—at three different times.

Here J. B. Laidley requests the notary to certify that before the witness answered question 4th above asked, and after it was read out to the witness, Gordon O'Beirne, attorney for Mrs. Pennybacker in these cases, stated aloud in hearing of the witness that she, the witness, had already answered that in her examination-in-chief, and had then said that she was not present at all of the interviews. The notary declines to certify the fact and occurrence here stated on the grounds — the notary declines to make the above endorsement, not believing it any part of the evidence.

Ans. I coulden't state positive that I was there at all three — the interviews.

5. Were you present at more than one interview between me and Mrs. Pennybacker?

Ans. Yes, sir; I was.

6. At how manny were you present; how long apart were they?

Ans. I could not state; indeed I coulden't. I cannot state how far apart they were.

7. Did you see me at Mrs. Pennybacker's after the one visit when you say I stayed all night; or did you see me there before that?

Ans. I saw you there the night you stayed all night and also the next day, either at dinner or supper.

8. Did you see me there at Mrs. Pennybacker's at any other time or times than you have mentioned in your last answer?

Ans. I disremember seeing you there any other time.

9. Where were we, Mrs. Pennybacker and myself, when we were discussing the business upon which I had called; in which room were we?

Ans. That I could not state, as it was not private at all.

373 10. Was it not in the front room, or the one they called the parlor?

Ans. I coulden't say.

11. Was it in the front room the next day when I called that we met?

Ans. I disremember.

12. Were you present when I returned, as you say, the next day, and what did I call for the day after I stayed all night?

Ans. Yes, sir; I was present. You came there to make the proposition about taking her suit.

13. Did I make the proposition before I stayed all night?

Ans. Well, I disremember that.

14. What is dower?

Ans My understanding of dower, if I know right, is if my husband should own property and be going to sell it I would have an interest in that land, and I would have to also sign my right away.

15. What interest would you have in such case in the land if you did not sign your right away?

Ans. Why, I would think I would still hold my third.

16. If some one were to give you a piece of land and make a deed to you for it while you were married, would you have dower in your land?

Ans. No, I shouldn't think so.

17. Did you so understand this matter as you have stated in the last three answers at the time of my interview with Mrs. Pennybacker?

Ans. Yes, sir; I understood dower then as I understand it now.

18. Who was present at the time you heard the interview between me and Mrs. Pennybacker? Were you present all the time? Did you hear all that was said by us?

Ans. Mrs. Ferguson and Mrs. Walstrum were at that time both single. Yes, sir; I was present all the time the interview lasted. I could not say that I heard all that was said by you both.

19. Can you now tell where we all were, in which room, and what portions we occupied in the room or any of us?

Ans. No, sir; I could not.

20. Did you hear Mrs. Pennybacker tell me, "Mr. Laidley, how is it I have any interest in the land in question? We sold it; my husband got the money for it, and how can I have any interest in the land?" or anything to that effect?

Ans. She told you she had no dower in the land. Yes, sir; I heard her tell you that. She told you several times that she had no interest whatever in it—or dower, either one.

21. Did I tell her that it was true she had signed the deed to C. P. Huntington for the land, but that her acknowledgment of the deed was not made in accordance with law, and that it was the same as if she had not made any deed, or anything like that?

Ans. I disremember hearing you saying anything about a deed at all. You did not mention deed that ever I heard of at all.

22. Do you swear positively that I never told her at any
371 time in the conversation you refer to that the deed she had made to C. P. Huntington for the land referred to was void, and that it was the same as if she had never made any deed to him for it at all, or that it was not worth brown paper, or anything to that effect?

Ans. Yes, sir; I can swear that I never heard it. I don't swear that you did not say it. I don't know what you said when I was not around. You never said it in my presence.

23. Please state what was the contention on my part and what on Mrs. Pennybacker's part in the little argument you refer to in answer to 4th question-in-chief and if you took part in the debate.

Ans. You claimed that she had a dower in this land, and she

claimed she had not. No, sir; I did not take part in the debate. I was disinterested party.

24. Do you remember any more of the debate—what I claimed, or what she (Mrs. P.) insisted upon?

Ans. No, sir; I do not.

25. Did I keep on saying, You have dower in your own land, and did she keep on saying, I don't see how I have dower; I have sold it, &c.? Did I say nothing more than that to support my view?

Ans. Nothing that I remember.

Mr. Laidley here requests the notary to certify that Mr. Gordon O'Beirne, attorney for Mrs. Pennybacker, stated in the hearing of the witness when she had answered as above that "that is enough," and said that to the witness. I do not think it was said to witness, and refuse to certify it, because, in my opinion, the witness was through with her evidence at the time.

26. Did I tell Mrs. Pennybacker not to consult any lawyer about the matter? Did I not tell her to consult any attorney she pleased, but not to give her case or suit to another attorney and leave me out after I had informed her about the defect in her deed and how she could recover her land?

Ans. Most emphatically you told her that she could not consult any lawyer, but that she might go to any intimate friends. She went to Mr. Dickey and Mr. Sanders.

27. Did I tell her (Mrs. P.) she could have dower in her own land, and did I tell her not to ask a lawyer how she had dower in her own land?

—. Yes, sir; you told her she had dower, but I did not hear you mention anything about lawyer that I remember of.

28. Did I tell Mrs. Pennybacker how she had dower in her own land?

Ans. Not that I know of.

29. Will you swear positively that she, Mrs. Pennybacker, did not ask me to tell her how she had dower in the land? Will you swear positively that I used the word "dower" instead of the word "interest" in the land, and will you swear positively that I told her she could not consult any lawyer, but might consult her intimate friends? How is it you can remember these matters and state them so positively, and can't remember the room in which the
375 conversation occurred, and cannot remember the position occupied by any one you say was present in the room?

Ans. Mrs. Pennybacker did ask you to explain how she had dower in the land. I will — positively that you used the word dower instead of interest. I swear positively that you told her she could not consult any lawyer, but might consult any intimate friend. First it was matters of importance I could not help but remember, and then it was not talked in any one particular room for us to remember; it was talked both in the sitting-room or parlor and in the dining-room.

30. What time in the day did I first call to see Mrs. Pennybacker

about the matter? Had you seen me before? How was I dressed? Did I wear a beard or not at that time?

Ans. I think in the evening before supper, and stayed all night, if I am not mistaken about it. I had never seen you before that time. I took no notice as to how you were dressed. I think you wore a beard at that time.

31. Did I tell Mrs. Pennybacker that I would bring her the written opinion of the ablest attorney in the State to the effect that the deed she and her husband had made to C. P. Huntington for the land in controversy was absolutely null and void, and that she could set it aside and recover the land, or anything to that effect?

Ans. No, sir; you did not.

32. You say you first became acquainted with Mrs. Pennybacker in 1881, after the death of her husband, and that you were "a great deal more intimate with her then than you are now." What made you so intimate then, when you lived in Covington, Ky., and she in Huntington, W. Va., and why are you less intimate now, when you live near her, as her second-door neighbor in Huntington, W. Va.? How do you explain this when nothing has interrupted your friendship? Don't you mean exactly the contrary—that you are more intimate now, because things happened to cement your friendship together?

Ans. Well, when I lived in Covington, Ky., and came up here on a visit I stayed long enough to justify me and got tired and wanted to go home. The reason I am not so intimate now as then I have two children and my household duties, which keep me occupied, and I have no time to visit my neighbors. No, sir; I generally mean what I say. I am not more intimate now, and nothing has happened to cement our friendship together. I seldom ever see her now.

33. Did you ever tell Mrs. Flannyan, your sister-in-law, that Mrs. Pennybacker had promised to give you and your sister-in-law, Miss Leona Sanders, a new dress if you would be present and hear the conversation between Mrs. Pennybacker and me about the sale of her interest to me, and did you say to Mrs. Flannyan that that was the reason why you were present, or anything of that sort?

Ans. She, Mrs. Pennybacker, never stated anything about being present and hearing the conversation, but said if Mr. Laidley paid her the money that she would give us, myself and Leonora,
376 a present of a calico dress a *price*, which she did. No, sir; I never spoke to Mrs. Flanegan regarding the subject at all.

34. Did you ever say, in the presence of Mrs. Jennie Donnella, that Mrs. Pennybacker had promised to give you a calico dress, or anything of that sort?

Ans. I don't know Mrs. Donnella at all. I don't know whom you have reference to.

35. Did you ever tell Mrs. Willie Flannigan that Mrs. Pennybacker had promised to give you and your sister by marriage, Miss Leonora Sanders, a calico dress if you would swear about the conversation between me and Mrs. Pennybacker, or anything of that kind? I did not mean to ask you if you had made such a state-

ment to Mrs. Donnella, but if you had not made such a statement to Mrs. Pennybacker or in her presence.

Ans. No, sir; I never made such a statement to Mrs. Flanigan nor in her presence.

36. What did Mrs. Pennybacker give you and Miss Leonora Sanders a calico dress for?

Ans. I suppose through friendship's sake.

37. Did she give you the dress after I had paid her the money for the land?

Ans. Yes, sir; after first payment, which was $100.00.

38. When did Mrs. P. say she would give you and Leonora a calico dress apiece; was it before she (Mrs. P.) had made me the deed or afterwards?

Ans. It was when Mrs. Pennybacker was expecting you to make the first payment of $100.00. I couldn't state whether it was before or after the deed was made.

39. Was the promise of the dress after the conversation you say you heard between me and Mrs. Pennybacker at the time I stayed all night at her house?

Ans. Yes, sir; it was.

40. Was it when she was asking me for a payment on the note, say in March or April, 1882, or do you remember the date?

Ans. I disremember any dates at all. I never remember of her asking for a payment at all.

41. How long afterwards did she keep her promise? When did she give you each a dress?

Ans. Soon as she received the money on the first payment.

42. In answer to question 33d you say Mrs. Pennybacker said to you if Mr. Laidley paid her the money she would give you and Leonora a calico dress apiece. Now, did not Mrs. Pennybacker say if you would remember what I said she would give you a dress apiece?

Ans. She said nothing of the kind to me.

43. State where and when you first met Mrs. Pennybacker.

Ans. I first met her on 7th avenue, at her own residence, in Huntington, the Saturday after her husband's funeral.

44. When you came to Huntington in Dec., 1881, the winter after the death of Mr. Pennybacker, was Mrs. Pennybacker at home, and did she go to Cincinnati and leave you at her house?

377 Ans. Yes, sir; she was at home. You prevailed on her to return to the city with my mother.

45. What do you mean in answer to 2nd question-in-chief, that I did not transact any business the first night I called at Mrs. Pennybacker's? Do you mean to say I did not tell her any business the first night and before I went to bed?

Ans. Not that I remember of.

46. Your memory is not clear and distinct, is it, as to the conversations between me and Mrs. Pennybacker at that time as to what was said, where, and when the matter was discussed?

Ans. Yes, sir; my mind is perfectly clear, and there was no business transacted in my presence the first evening.

47. Then when and where did you first see me, in what room, at what time of the day, and what did I say?

Ans. I first met you in the dining-room at Mrs. Pennybacker's, at the supper table. I don't remember the conversation. There was no business transacted at the supper that night. I mean by business that there was no business transacted at the supper table in regard to the dower in land.

49. What did you mean in answer to second question-in-chief by saying, "He came to transact this business about her property"? What property do you refer to?

Ans. Why, this dower that Mr. Laidley claimed she had in this land which she had sold.

50. In answering said question why did you stop or halt and add the words "or her dower" after the word property as a second thought?

Ans. Well, because I think it is a very important question to answer, because I thought it was proper that I should explain it in that way.

51. Did you ever see me in the front room or parlor at Mrs. Pennybacker's at any time? If so, state circumstance.

Ans. Yes, I did; it was when you came to buy Mrs. Pennybacker's dower. The first time I saw you was in the dining-room. The time I saw you in the parlor was when you were talking of buying the dower. I disremember whether it was the next day or not, but think it was.

52. Did you ever talk to Mrs. Pennybacker as to what you remembered of our conversations or what you would swear, or did you ever talk to any one else as to that, and when and where?

Ans. Yes, sir; I have talked to Mrs. Pennybacker. I disremember where and when it was that I talked to her about it. I never talked to any one else excepting Mr. Sanders, my husband.

53. The only conversation you ever heard, then, between me and Mrs. Pennybacker about the land was on the day after I stayed all night, and in the front room, was it?

Ans. I disremember whether it was in the front room or not, but it was the next day. That was all at the first visit, but you called the second time.

378 54. When did I call the second time; how long after I was there on the second day?

Ans. I coulden't tell exactly; it was the same week. I disremember whether it was the next day or not.

55. What proposition did I make the next day after I had stayed all night? Have you not sworn that you never saw me there more than the time I stayed all night? See your answers to questions 7 and 8 in cross-examination.

Ans. You asked her, Mrs. P., to let you undertake this suit, which she positively refused, having no money to law with, and her son Mason, in the railroad employ, would be thrown out of employment. You told her you would bring suit for her, and if you gained it that she and you would divide, and if you lost the suit she was to pay you for your services—she said services, not cost—which she

refused to do, as she had nothing but her little farm to pay you with, and she diden't wish to lose that. I swear that I never saw you only that night and next day that you stayed all night, but I heard considerable of your conversation at your other visits, as it was in summer and the house was all thrown open.

56. What were you doing when you heard my conversations and did not see me, and where were you?

Ans. We were sitting in the hall, but could not say what I was doing; suppose I was talking.

57. Whom were you talking with?

Ans. Her daughters, Minnie and Lena.

58. Who was with me and where was I?

Ans. Mrs. Pennybacker was with you. I think you were sitting in the parlor or dining-room; I disremember which.

59. Were we in there alone?

Ans. That I coulden't state.

60. Did you hear any one talking beside me?

Ans. Mrs. Pennybacker.

61. How wide is that hall, how long is the hall, and does it extend through the house or only the length of the parlor from the front door?

Ans. I could not state how wide it is or how long, but it extends from the front door to the dining-room, and does not extend clear through the house; it only extends across one room.

62. How wide was the hall—12 feet or 6 feet? Please state as near as you can.

Ans. I won't state, for I have no idea.

63. You do not mean that you do not know the difference between 12 feet and six feet? If you do know, please tell as near as you can.

Ans. Yes, I know, but am afraid to state the exact width of the hall for fear I would be mistaken. There is a stairway in the hall, and the hall is not twice as wide as the stairway. I don't think the stairway is quite a yard wide.

64. Were you using the hall for a sitting-room, with the doors open?

379 Ans. We were sitting in the hall with both doors open, front and back. We were sitting there for mere convenience. It was the only place in summer that you could get any air, although it was not in summer when you were there that time.

65. What did you hear me say while you were in the hall with Minnie and Lena?

Ans. I heard you arguing with Mrs. Pennybacker in regard to her dower.

66. Please state what I said.

Ans. Well, I heard you arguing with her in regard to the amount you was to give her for this dower, and she said she had none, and you said she had according to the new constitution of West Virginia. That constituted the agreement.

67. Please state if I said anything else at that time—anything

about the $500.00 or consulting attorneys or friends. Please state all I said at that time while you and Minnie was in the hall.

Ans. Yes; the conversation was about the $500; to see if she would take the $500.00 for her dower. I disremember whether there was anything said that day about consulting attorneys or friends. I don't remember all you said at that time.

68. Did Mrs. Pennybacker consult your husband as to whether she would sell to me or bring suit?

Ans. She did, and he advised her not to sell.

69. If she says or swears she only consulted E. T. Mitchell and Ham. Dickey, is she telling the truth?

Ans. I don't suppose Mrs. Pennybacker would tell an untruth, but she asked Mr. Sanders if he would sell if he was in her place, and he said he would not sell.

70. Did he tell her to sell, and what did he tell her?

Ans. He did not. He said for her not to sell; if there was anything in it for Mr. John Laidley, there certainly was for her. That is what he told me.

71. Were you present when she consulted your husband?

Ans. I just answered that question. I couldn't say that I was present. I was not married at that time.

72. Did your sister-in-law, Miss Sanders, who has just been visiting you and Mrs. Flannigan, ever tell you that Mrs. Pennybacker would give you a lot if she recovered the land in controversy from me, in the event that I beat the said Co.?

Ans. No, sir; she diden't tell me anything of the kind.

73. Did Mrs. Pennybacker ever tell you she would give you a lot if she recovered the land from me? What do you think the land is worth?

Ans. No, indeed. I haven't the slightest idea what the land is worth.

74. Were you sitting in the hall with Minnie in the middle of January, 1882, without any fire, listening to my contracts with Mrs Pennybacker in the parlor, with both doors open, front and rear, as the only place where you could get any air?

Ans. We were sitting there listening to the conversation,
380 because it was an important conversation, but did not have the doors open for the main purpose of getting air.

And further the deponeth sayeth not.

MRS. M. E. SANDERS.

(Certificate omitted.)

The following depositions were taken on behalf of defendant John B Laidley at the law office of Campbell & Donnella, in the city of Huntington and State of West Virginia, and filed the 20th day of Oct., 1887:

THE CENTRAL LAND COMPANY OF WEST VIRGINIA, a Corporation,
vs.
JOHN B. LAIDLEY ET ALS.

and

D. W. EMMONS ET ALS.
vs.
J. B. LAIDLEY ET ALS.

The parties to the above-entitled causes, pending in chancery in the circuit court of Cabell county, are hereby notified that on the 18th day of October, A. D. 1887, between the hours of 8 o'clock a. m. and 6 o'clock p. m., at the law office of Campbell & Donnella, in the city of Huntington, county of Cabell, and State of West Virginia, I will take the depositions of F. F. McCullough and others, to be read as evidence in my behalf in the said two above-entitled causes; and if from any cause the taking of said depositions be not commenced on the day aforesaid, or be not completed on said day, the taking of the same will be adjourned from time to time and at the same place until completed.

Oct. 11th, 1887.

JOHN B. LAIDLEY.

Endorsed.

I accept due and legal service of the *written* notice to take depositions as attorneys for all of the parties to the within-mentioned suits except Mrs. S. H. G. Pennybacker.

Oct. 11, 1887.

SIMMS & ENSLOW, *Att'ys.*

(Caption omitted.)

Present: Campbell & Donnella, att'ys for the defendant; for plaintiff, F. B. Enslow.

JOHN B. LAIDLEY, a witness of lawful —, b-ing sworn, says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is John B. Laidley; my age is 37 years; I reside in Huntington, Cabell county, West Va.; am an attorney-at-law.

Ques. State if you are acquainted with the parties to these suits.

Ans. I am, and am a defendant.

381 Ques. State what conversations you had, if any, with Sarah H. G. Pennybacker in connection with the purchase of the 240 acres of land in controversy in these suits.

Ans. I had several conversations with Mrs. Pennybacker prior to her deed to me, on the 26th day of January, 1882, for the land mentioned. The first conversation was some time in December, 1881; the several others were in January, 1882. In December I called on Mrs. Pennybacker, in the city of Huntington, and informed her that the deed she and her husband had made to C. P. Huntington on the 25th day of Feb'y, 1870, was void as to her, because the acknowledgment was defective; that Thos. J. Hayslip, the recorder, had not

certified her acknowledgment of the deed according to law, and that it was therefore absolutely void, the same as if she had not made any deed at all.

She thereupon told me in answer to my question that her father had paid $8,000.00 to Rebecca J. Everett for the land in controversy and had the deed made to her, and that Huntington had paid her husband $11,000.00 for the land.

I told her that I would bring suit for her in her name and recover the land for one-half of the land. She said that her son was in the employ of the C. & O. Railway Company; that she was afraid they would discharge him if she brought the suit. She was also afraid that the costs of the suit would be more than she could undertake to pay, but told me to call again in a week, and in the meantime she would consult her friends about my proposition. I accordingly came back in the course of a couple of weeks, and she told me she had consulted her friends and they had advised her that if she could get something certain out of it it would be better than risking a lawsuit with the Central Land Company. I told her that I would pay the costs of the suit, and if I gained the suit I charge the costs to her.

She asked me what I would give her for her interest in the land. I told her I would give her $500.00. She told me she would consult her friends and for me to call again in a week or 10 days. At that time I resided in Barboursville, 10 miles from Huntington. I came back within two weeks. She told me that she had consulted her friends and had concluded to take the $500.00. I thereupon gave her $100 and gave her my note for $400.00. I then went to the law office of Harvey & Taylor and found F. F. McCullough and *take* got him to go out and take her acknowledgment of the deed. I gave her a written agreement not to sue upon her warranty; also a written agreement that I would secure her son another place if the railroad company discharged him on account of the suit. I afterwards paid the $400.00 to F. B. Enslow, to whom the note had been assigned.

I never told Mrs. Pennybacker at any time that she had a dower interest in the land, but that she had a clear and perfect title to the land.

That the deed she had make to Huntington was not worth "brown paper." She is a woman of good understanding, smart,
and fully understood the transaction. She never declined to
382 bring a suit, but took the $500.00 in preference to the risk of
suit, and F. F. McCullough took the acknowledgment and explained the deed to her; told her it was conveying me that land.

She told him she understood all about it. I was present when the acknowledgment was taken.

Cross-examined by F. B. ENSLOW:

Ques. Were you fully acquainted with all the facts connected — the execution of Mrs Pennybacker's deed to C. P. Huntington when you obtained your deed?

Ans. Only from the record and from what she told me at the time she made the deed to me.

Ques. Were you acquainted with the fact at the time of your purchase that the Central Land Company and those under whom it claimed had been in possession of the land since 1870?

Ans. I was.

Ques. Did you know they claimed under and by virtue of a deed from Mrs. Pennybacker and her husband?

Ans. I had no conversation with any one else and knew nothing about it except what she told me and what the record disclosed and the fact that the company was in possession.

Ques. Did you know the value of the land?

Ans. I knew the corporation value.

Ques. What did you consider it worth at the time?

Ans. I would consider it worth $30,000.00 or more than that with a clear title.

Ques. Did you not, at the time you made the trade with Mrs. Pennybacker, being the time when you agreed upon the terms of payment at her house in Huntington in the presence of two other ladies, state to Mrs. Pennybacker that all she could recover in the property was a life interest in the ⅓ thereof or her dower interest?

Ans. No, sir; I did not. On the contrary, I told her the deed was absolutely void, and that she could recover her property.

Ques. Did you not at the time the trade was made explain to her in the presence of her daughter and some other lady that the only interest that Mrs. Pennybacker could recover was her dower interest in the land?

Ans. I did not. On the contrary, I told her I would give her daughter a corner lot if I recovered the land, and she could "pick it."

Ques. Do you remember who was present when the trade was made?

Ans. We had several conversations, and there was a woman present at one of them, but I don't remember who she was.

Ques. In the presence of that lady did you not tell Mrs. Pennybacker that all the interest she had in the land was a dower interest?

And further this deponent saith not.

JOHN B. LAIDLEY.

383 A. P. MITCHELL, a witness of lawful age, being duly sworn, says:

Ques. State your name, age, residence, and occupation.

Ans. My name is A. P. Mitchell; I am 47 years old; I reside in Huntington, Cabell county, West Va.; am marshall of the city of Huntington.

Ques. Are you acquainted with the parties to these suits?

Ans. Yes; John Pennybacker, the husband of Sarah H. G. Pennybacker, was a second cousin.

Ques. State what conversations you had, if any, with Mrs. Sarah

H. G. Pennybacker in reference to the sale of the land in controversy to John B. Laidley, the defendant.

Ans. She came to my father, E. F. Mitchell, to consult him. I was not present, however. She told me she could sell her interest in that land for $500.00. I remarked to her that she had no interest; that she had sold it to Huntington. She said that John B. Laidley claimed that he could set aside the deed. She asked my advice about it. I told her that she *would* better take the $500.00; that it was that much certain.

Ques. Where was and when was that conversation?

Ans. It was at my house; I think before the trade was consum-ated.

Ques. Did she conclude then to take the $500.00?

Ans. I infer-ed that she intended to take the $500.00.

Ques. Did she say that I told her that she had a dower interest in the land?

Ans. She said nothing about that.

Ques. What did she say?

Ans. She said she had a chance to sell her land. I told her it was like finding that much money, as she had no interest in the land.

Ques. Did she know her title to the land?

Ans. She knew that her father gave $8,000.00 to Mrs. Rebecca J. Everett for the land and had the deed made to her as — gift to her from her father.

And further this deponent saith not.

A. P. MITCHELL.

The further taking of these depositions is continued till tomorrow, Wednesday morning, Oct. 19, 1887, at the same place and between the same hours.

Depositions resumed pursuant to adjournment on yesterday.
Present on behalf of plaintiffs: F. B. Enslow.
" " " " def'ts: Campbell & Donnella.

F. F. McCULLOUGH, of lawful age, being duly sworn, says:

Ques. State your name, age, residence, and occupation.

Ans. My name is F. F. McCullough; I reside in Barboursville, Cabell county, West Va.; I am clerk of the county court and also notary public.

Ques. Are you acquainted with the parties to these suits?

384 Ans. I am acquainted with most of the parties to these suits.

Ques. State whether or not you are the same notary that took the acknowledgment of Mrs. Sarah H. G. Pennybacker to a deed bearing date the 26th January, 1882, conveying to John B. Laidley the land (the 240 acres) in controversy in these suits.

Ans. I took the acknowledgment of a deed from Mrs. Sarah H. G. Pennybacker to John B. Laidley, conveying 240 acres of land in

Huntington, reserving one acre in the conveyance. It was some time in the winter of 1882.

Ques. State what occurred at the time you took the acknowledgment and what conversation you had with Mrs. Sarah H. G. Pennybacker at the time you took the acknowledgment of the deed referred to.

Ans. Mr. Laidley came to the office and told me that he wanted me to go out on 7th avenue to take an acknowledgment, and we went out to Mrs. Pennybacker's residence. I think Mr. Laidley pulled a deed out of his pocket and handed it to me. Mrs. S. H. G. Pennybacker signed the deed refer-ed to in my presence. I explained the deed to her—that is, I told her it conveyed 240 acres of land in Huntington, less the reservation named therein.

Ques. Did you tell Mrs. Pennybacker that the deed refer-ed to conveyed the land to John B. Laidley, and did you ask her if she understood that that was a conveyance of that land to John B. Laidley?

(Objected to because it is leading, having been answered before, and improper and immaterial.)

Thereupon the following question was submitted (the former being withdrawn):

Ques. Please state what further conversation you had with Mrs. Pennybacker at the time you took her acknowledgment to the deed refer-ed to.

Ans My recollection is I read the deed over to her and explained it. I know I explained it to her and told her what it conveyed—that it conveyed the 240 acres of land in Huntington, less the reservation.

Ques. Who was present and what did Mrs. Pennybacker say?

Ans. My recollection is that no one was present but Mr. Laidley, Mrs. Pennybacker, and myself; possible one of the children was present, but I don't remember. My recollection is that after she signed the deed I explained it to her. I think that she made the remark that I understand it thoroughly.

Ques. Did Mrs. Pennybacker, as a fact, understand the nature of the deed she was executing?

(Objected to because leading and improper.)

Ans. I think she did.

Ques. Is Mrs. Pennybacker a woman of good understanding?

(Objected to as leading.)

385 Ans. I consider Mrs. Pennybacker an intelligent lady, and a woman of good sense and understanding.

Cross-ex.:

Ques. How did it happen that you explained the deed to Mrs. Pennybackers, and is it usual custom to so explain deeds?

Ans. On examination of the deed by myself I saw what it conveyed and explained it to her. It has been my custom since I have

been a notary to explain deeds when they are signed and acknowledged by woman, married or single.

Ques. Are you confident that you explained to her that the deed conveyed 240 acres of land, less one acre reserved, and not her interest as the widow of John M. Pennybacker, deceased, in said land?

Ans. My recollection is I told her it conveyed 240 acres of land (less the reservation) in the city of Huntington. Nothing was said to me about her interest as widow of John M. Pennybacker, deceased, in said land.

Re-'xamined:

Ques. Did Mrs. Pennybacker say anything about dower interest in the land?

Ans. She said nothing to me about any dower interest in the land.

And further this deponent saith not.

F. F. McCULLOUGH.

(Notary certificate omitted.)

The defendant Sarah H. G. Pennybacker objects to the reading of the foregoing depositions as to her, for the reason that she had neither notice nor knowledge of the time or place of the taking of the same.

Feb. 8, 1888.

SARAH H. G. PENNYBACKER,
By COUNSEL.

The following depositions were taken on behalf of defendant John B. Laidley at the law office of Campbell *of* Donnella, in the city of Huntington, W. Va., and filed the 12th day of January, 1888:

THE CENTRAL LAND COMPANY OF WEST VIRGINIA *vs.* JOHN B. LAIDLEY ET ALS.

and

D. W. EMMONS ET ALS. *vs.* JOHN B. LAIDLEY ET ALS. } In Chancery.

The parties to the above-entitled suits are hereby notified
386 that on the 24th day of December, 1887, between the hours of 6 o'clock a. m. and 6 o'clock p. m., at the law office of Campbell & Donnella, in the city of Huntington, in the county of Cabell, and State of West Virginia, I will take the depositions of Thomas L. Michie, John H. Oley, and others, to be read in evidence in my behalf in the above-entitled suits, in chancery, pending in the circuit court of Cabell county, West Va., and if said depositions

be not completed on that day the same will be adjourned from time to time at the same place until completed.

Dec. 21st, 1887.

JOHN B. LAIDLEY.

Endorsed.

We accept service of the within notice for all the parties save Mrs. S. H. G. Pennybacker, such exceptance to have no more effect than a service would have if served on the parties.

SIMMS & ENSLOW, *Attorneys.*

December 22, '87.

The taking of the depositions mentioned in the notice hereto annexed were commenced, pursuant to said notice, at the office of Campbell & Donnella, in the city of Huntington, Cabell county, West Virginia, on the 24th day of December, 1887, between the hours of 6 o'clock a. m. and 6 o'clock p. m., to be used and read as evidence in behalf of John B. Laidley in two certain suits, in chancery, depending in the circuit court of Cabell county, where in one of said suits The Central Land Company of West Virginia is plaintiff and John B. Laidley *et als.* are defendants, and in the other of said suits D. W. Emmons *et als.* are plaintiffs and John B. Laidley *et als.* are defendants.

Present: John B. Laidley, att'y for himself.

Thereupon the further taking of the foregoing depositions is continued until Monday, December 26th, 1887, at the same place and *and* between the same hours mentioned in the notice hereto annexed and in the caption hereof.

Given under my hand this the 24th day of December, 1887.

THOMAS A. WIATT,
Notary Public, of Cabell Co., W. Va.

The further taking of the depositions mentioned in the notice and the adjournment on Saturday, December 24th, 1887, is resumed, according to the adjournment, at the same place and between the same hours.

Present: John B. Laidley.

Thereupon the further taking of the foregoing depositions is adjourned until tomorrow morning at 9 o'clock a. m.

Given under my hand this 26th day of December, 1887.

E. S. DOOLITTLE,
Notary, C. C.

387 The taking of the foregoing depositions is this day again resumed at the place and between the hours mentioned in the aforesaid notice, pursuant to adjournment on yesterday, Dec. 26, 1887.

Present: Geo. F. Donnella.

Thereupon the further taking of these depositions is continued

and adjourned until tomorrow, the 28th day of December, 1887, between the same hours and at the same place.

Given under my hand this 27th day of December, 1887.

E. S. DOOLITTLE,
Notary Public, C. C.

The further taking of the foregoing depositions is this day resumed, at the same place and between the same hours mentioned in the aforesaid notice, pursuant to adjournment on yesterday, the 27th day of December, 1887.

Present: Geo. F. Donnella, att'y.

Thereupon the further taking of these depositions is continued and adjourned until Saturday, the 31st day of Dec., 1887, at the same place and between the same hours.

Given under my hand this 28th day of Dec., 1887.

THOMAS A. WIATT,
Notary Public.

DEC. 31ST, 1887.

Pursuant to adjournment last above noted the taking of these depositions is resumed.

Present: Campbell & Donnella, att'ys for John B. Laidley, and Jno. B. Laidley, for himself.

P. A. ADKINS, a witness of lawful age, being first duly sworn, deposes and says as follows on behalf of John B. Laidley:

Ques. 1 (by J. B. Laidley's att'ys). State your name, age, residence, and occupation, and if you are acquainted with the parties to this suit.

Ans. My name is P. A. Adkins; I am forty-two years old; I live about four miles back of Huntington, in Cabell county, W. Va.; I am a farmer by occupation; I know John B. Laidley, D. W. Emmons, S. H. G. Pennybacker, Mat. Noble, Asa Williams, and some of the others.

Ques. 2. State if you are acquainted with the lands in controversy in these suits.

Ans. Yes, sir.

Ques. 3. State whether you ever had any conversation with Mrs. S. H. G. Pennybacker concerning any transaction between Jno. B. Laidley and her in relation to the land in controversy. If so, please state the time, place, and circumstances and what the conversation was.

Ans. Mrs. S. H. G. Pennybacker had more than one conversation with me in which she referred to a transaction between herself and Jno. B. Laidley about the lands in question. It was some
388 time during the winter of 1881 and 1882 that the first conversation occurred. Mrs. Pennybacker was living in one of Mat. Noble's double houses on 7th Ave., 9th and 10th streets, in Huntington, W. Va., at the time, and the conversation took place at that house. Another conversation occurred later; I think in the spring of 1882. This also occurred at the same place.

Mrs. Pennybacker either had rented or was about to rent the Marion Graham farm, on the waters of Four-pole, to me at the time. At the time I owned and lived on Jeff. Graham's tract, adjoining said farm.

She rented to me the Marion Graham tract for the year 1882 for $75.00 cash rent. I took possession before the first of March in that year. The contract for the lease was in writing, and in the same writing or contract was enclosed the $75 rent. Mrs. Pennybacker wanted me to give a negotiable note for the $75.00 rent, so that she could negotiate the note and get the rent in advance, and she sent for me to come in to see her to make that arrangement, and it was then that she incidentally mentioned the transaction between John B. Laidley and her. I told her if I gave the note the taxes would be against the land and would hold my property, and I would then have no way of getting the taxes back. Mrs. Pennybacker said I need not be uneasy about the taxes; that she would pay the taxes; that she had a chance to get some money from Mr. Laidley; that Mr. Laidley had offered her $500.00 for her land which she had sold to C. P. Huntington. She said that Mr. Laidley claimed that he could set aside the deed she had made to Huntington and recover the land for her. She said that Mr. Laidley had offered to recover the land for her for one-half of the land, but she had advised with her friends, A. P. Mitchell and E. T. Mitchell, and they told her that she had no interest in the land; that she had sold the land to Huntington, and that she had better take the $500.00; that she would have that much certain. She said she believed she would take the $500.00.

At that time she had not made the sale to Mr. Laidley. At that time she wanted to sell me the Graham land, but I declined to buy, but I afterwards found her a purchaser. I also had a conversation with Mrs. Pennybacker afterwards—I think in the spring of 1882—in which she told me that she had sold the land in controversy to Mr. Laidley, and that he had paid her $100.00 down and was to pay her $400.00 more; that she had paid the taxes on the Graham land.

Ques. 4. Did Mrs. Pennybacker, in either or any of her conversations, ever say anything about what interest or estate in the land in controversy she had sold or was to sell to Jno. B. Laidley?

Ans. She said she had sold the land to J. B. Laidley. She said nothing else about any interest in the land. She told me how she came by the land; that it came through her father, and that she and her husband had sold it to C. P. Huntington.

Ques. 5. Did she say anything about selling Mr. Laidley any dower interest in the land in any of her conversations?

Ans. She never said anything about dower in any of —
389 conversations. She explained that the land was hers and that it had been given to her by her father.

And further this deponent sayeth not.

P. A. ADKINS.

J. M. NOBLE, another witness of lawful age, being duly sworn on behalf of John B. Laidley, deposes and says as follows:

Ques. 1 (by att'ys for J. B. Laidley). State your name, age, residence, and occupation, and if you know the parties to this suit, and what relation do you bear to these suits or either of them.

—. My name is James Madison Noble; I am fifty-six years old, and live about one and one-half miles from Huntington, Cabell county, W. Va. I was for a long time a grocery-keeper and butcher, and am now a brick manufacturer. I know most of the parties to these suits. I know John B. Laidley, S. H. G. Pennybacker, D. W. Emmons, C. P. Huntington, and others of them. I am one of the plaintiffs in one of the chancery suits.

Ques. 2. Have you ever had any conversation with Mrs. Pennybacker about the land in controversy in these suits or her dealings with J. B. Laidley about the same, and are you acquainted with the land in controversy?

Ans. I am acquainted with the land in controversy and claim three lots located on the land. I have had one conversation with Mrs. Pennybacker about the matter at her residence, on 7th avenue between 9th and 10th, in Huntington, W. Va. The house she lived — belonged to me and she was my tenant at the time. I called on her for rent which she was owing me, and it was at that call she mentioned the circumstance to me. She told me she had sold her interest in the land in controversy to John B. Laidley for $500.00. She said that Mr. Laidley had told her that the deed she had made for the land was defective, and that he could set the deed aside and recover the land for her, and that she had sold the land to Laidley for $500.00. This was about the time that John B. Laidley brought the ejectment suit against the Central Land Co. and its tenants, but I can't remember the exact time.

Ques. 3. In that conversation did she say anything about having a dower interest in the land or selling a dower interest to J. B. Laidley?

Ans. She did not say anything about dower.

Ques. 4. Please state what the rental value of the land in controversy is worth per annum.

Ans. About $5.00 per acre for the bottom land and $2.50 per acre for the hill land.

Ques. 5. Please state whether you have made any brick on the land in controversy; and, if so, how many, and of whom did you buy the clay, and at what price?

Ans. Charles McCann and I made brick on said land in the summer and fall of 1887. We were equal partners. We made 321,000 brick. We bought the clay from D. W. Emmons, agent for
390 the Central Land Company, and agreed to pay 30c. per thousand for the clay.

And further this deponent sayeth not.

J. M. NOBLE.

JOHN B. LAIDLEY, another witness of lawful age, being duly sworn, *of* behalf of John B. Laidley, deposes as follows:

Ques. 1. State whether you have caused the land in controversy — on the land books of Cabell county in your name; and, if so, whether you have paid the taxes thereon.

Ans. I caused the land in controversy to be placed and entered on the land books of Cabell county in my name in the year 1883 or 1884. The assessor entered the tract on the books in two separate parcels, one, including the bottom, at 40 acres and one as hill land at 200 acres. The tax on the whole was $— for the year 1884, which was the first year that I paid the taxes on it in my name. I paid the taxes—State, county, district, and city—for the years 1884, 1885, and 1886, except the city tax for the year 1886. The city tax for the year 1886 I tendered John H. Oley, treasurer and collector for the city of Huntington, on the 4th day of December, 1886. The city levy, 1886, was 75 cents on the $100.

I tendered the sum of $60.00, that being the amount of the city tax due and unpaid for that year at the rate aforesaid and at the valuation aforesaid. For the year 1884 the city tax was $64.00 and was assessed in my name, and I paid the same. For the year 1885 the city tax was $60.00, and was assessed on the land in my name, and I paid the same. The State, county, and district taxes for the years 1884, 1885, and 1886 were assessed to me on the land books of the county and amounted to the sum of $264 76, all of which I have paid, together with interest thereon, to the State treasurer, W. T. Thompson (and here the witness exhibits his receipts for the payment of said taxes, marked "T. A. W., notary," filed as part of this deposition), and the foregoing are all of the taxes charged and chargeable on the land for the years aforesaid in the name of John B. Laidley, and the land is now on the land books in my name in the two parcels as stated.

At this point F. B. Enslow, attorney for the Central Land Co., appeared and objected to the reading of the foregoing depositions of P. A. Adkins and J. M. Noble, because the depositions are taken during the term of the circuit court and because at the time of the taking the attorney for the Central Land Co. was engaged in trying a suit before a magistrate and could not be present until after the examination was closed; and, further, objects to the reading of so much of the deposition of the witness, John B. Laidley, as refers to the taxes, for the reason that the books of the county assessor are the best evidence on the subject.

391 And thereupon J. M. NOBLE appeared, and the attorney for the land company, F. B. Enslow, asked him the following questions on cross-examination:

1. What did Mrs. Pennybacker say to you about her having sold the land to C. P. Huntington?

Ans. She did not say anything to me that I remember of.

2. Did Mrs. Pennybacker tell you she had sold the land to J. B. Laidley, or that she had sold her interest in the land?

Ans. She said her interest in the land. She did not say her land.

3. What interest did she say she had sold?

Ans. Did not say any more than "her interest;" did not say what interest.

Re-examined by J. B. LAIDLEY:

Ques. 1. Did she say anything about dower?

Ans. I diden't hear no dower mentioned.

Ques. 2. Did you understand what land *you* she referred to, and did you tell her about having three lots on it?

Ans. I think I told her I had three lots on it. I understood she referred to the Pennybacker land.

J. M. NOBLE.

The deposition of the witness, JNO. B. LAIDLEY, is resumed:

Ques. State if you have read the deposition of Mrs. S. H. G. Pennybacker, of Mrs. Mollie Ferguson, and Minnie Walstrum, and state if you were not present at the taking of their depositions and did not cross-examine them, and state if you have any further statements to make in relation to your transactions with Mrs. Pennybacker concerning the purchase of the land in controversy.

Ans. I have not read the depositions over since they were taken, but I was present at the taking *of the taking* and read them at the time and cross-examined the witness mentioned, and several matters have occurred to me in my negotiations with Mrs. Pennybacker, as indicated in my cross examination of the witnesses. First, I want to state with reference to our conversation concerning the advice of attorneys at my first interviews with Mrs. Pennybacker and also at my second interview with her I insisted on her bringing the suit against the Central Land Company to set aside her deed to C. P. Huntington on account of the defective acknowledgment, upon my first proposition to her, she to have one-half and — one-half if I gained the suit; and at each of the said interviews I told her that I know or thought I knew that her deed was void because of the defect in the acknowledgment and that she could recover the land, and that if she was not willing to take my opinion upon the question I would bring her the written opinion of the ablest attorneys in the State to the effect that the deed was void and that she could recover the land. She did not decline to bring the suit, but said she would take time to consider and consult her friends. I told her to consult any one she pleased and to consult any lawyer she pleased
392 on the subject, but if she consulted an attorney not to give him her case and leave me out, as long as I had informed her of the defect in her deed and of her right to recover. I made no contract with her, verbal or written, at our first interview, where Mrs. Pennybacker states in her deposition that I bound her not to consult any attorney upon the question of the defect in her deed and her right to recover or upon any question relating to the matter. I contradict her on oath, and state that such assertions of hers are false and untrue. Not only that, but at our second interview I

still told her that I would rather she would bring the suit in her own name for one-half the land to me and one-half to her if I gained the suit, and she made the objections that I have heretofore stated and as she has also stated in regard to bringing the suit in her own name. She did not at any of our interviews decline positively to bring the suit in her own name, but after her consultations concluded that if I would make her an offer for her right to recover the land she would rather sell. She stated to me what I believe I have not heretofore stated, that she was unable to fight the land company.

I told her in answer to that I would lend her as much as $400.00 to conduct the suit with and charge it on her part of the land if we recovered it, but she concluded to sell for a sum certain, on the grounds that she had no faith in the proposed suit to recover the land.

I never proposed to charge Mrs. Pennybacker anything for legal services if I failed to gain the suit for her. The proposition was to charge her costs that I might advance to the extent of $400.00 on her part of the land if I gained the suit. I never asked her at any time whom she had consulted or advised with as to whether she would bring the suit or not and as to whether she would sell or not, and I never knew whom she had advised with until some time after she had made the deed to me. I never at any time during my interviews with her told her or intimated to her that she had a dower in the land in controversy. On the contrary, I explained to her thoroughly the defect in her deed to Huntington, and told her that it was the fault of the recorder, Thos. J. Hayslip, in not making the proper certificate of her acknowledgment. I told her that on account of the said defect her deed to Huntington was absolutely void. I told her that it was not worth brown paper; that it was the same as if she had never made any deed at all.

My first interview with Mrs. Pennybacker, I remember distinctly, was in the front room, downstairs, of the Mat. Noble house, where she lived on 7th avenue. It was my first acquaintance with her. There was no one present but myself and her. I had called some time previously, and was informed by some of the children that their mother was in Cincinnati. I staid all night at her house at one time; she was keeping a boarding-house. When the deed was acknowledged I went out with Mr. McCullough, and there was no one present but Mr. McCullough, Mrs. Pennybacker, and myself. We were received in the front room. When we had our first interview the weather was cold. There was no fire in the room, and Mrs. Pennybacker was sitting at one end of the table.

393 I was sitting at the opposite end, Mr. McCulloch *at* between us at the side of the table. The table was placed near the window, against the east wall; the window was near the middle of the east wall. At the close of our conversation, as we were about to go, Mr. McCullough took her acknowledgment, and was standing up at that time. Mr. McCullough explained the deed to her; told her it was a deed conveying that land to me, and asked her if she understood it. She answered that she understood all about it and

acknowledged the deed. She did not say that it was a deed conveying her dower interest, and her deposition to that effect is false and untrue. I never heard anything or insinuation from Mrs. Pennybacker to the effect that I had mislead her in this matter before her testimony in the ejectment case between me and the land company, in Dec., 1884. At the trial of this case I introduced her myself on the witness stand to testify in my behalf, though she had been summoned by the defendant, The Central Land Company.

I did not know what the company had her summoned for, and introduced her to prove her *to prove her* marriage to John M. Pennybacker, thinking there might be a defect in the depositions on that point; also to prove the death of John M. Pennybacker.

Mr. Hogeman, who cross-examined her, tried to make her swear that she had not sold me any interest in the land, but that she had only made me a deed or writing for $500.00, without intending to convey to me any interest whatever in the land, and she did so state, but departed from the statements on re-examination and said that she thought she was only selling a dower interest. I firmly believe the whole scheme was concocted by the attorneys for the Central Land Company in that case.

Cross-examined by attorney, F. B. Enslow:

Ques. 1. Do you swear, in giving testimony in this case, to what you know or simply to what you believe?

Ans. I have no positive knowledge of the fact stated in the last line of my answer to the last question, and the same is stated upon information. I swear to what I know to moral certainty in every other line of my testimony in this case. What is stated on information in the last line above referred to I have good reasons for believing it to be true. I would like for some of the attorneys for the land company to help my unbelief. I don't think Mr. F. B. Enslow had any hand in the scheme. He was junior counsel in the case.

Ques. 2. When you first called upon Mrs. Pennybacker was it not at your own instance and of your own accord?

Ans. Yes, sir; I was the first to inform her of the defect in her deed.

Ques. 3. Before you called on Mrs. Pennybacker in regard to the land had she ever spoken to you about it or requested you to act as her attorney to recover it?

Ans. No, sir.

Ques. 4. At the time you first called on her were you not
394 acquainted of the fact that the Central Land Company claimed the land in fee-simple, and that it had been in possession over ten years and laid out the same in streets, alleys, and town lots, and sold a number of the lots to various parties who had built houses on such lots and were living in the same?

Ans. My knowledge of the compan*ie*'s claim and title was derived from the record in the county clerk's office. I knew of the fact that the company had laid off the city of Huntington in town

lots and this land was in the corporate limits of the city, and that a number of houses had been built on the lots on the land in controversy. I knew nothing of the titles of the owners further than the records disclosed.

Ques. 5. As a matter of fact outside of the records, did not you know at that time that the Central Land Company was in actual possession of the land, claiming it as absolute owner?

Ans. I knew the land company and its tenants were in actual possession of the land. I only knew outside of the history of the town or county of the claim of the land company. I had no personal knowledge of the transaction or purchase of the land in controversy from J. M. Pennybacker and wife by the company nor by information from any of the parties interested in the transaction further than was told to me by Mrs. Pennybacker at the time I purchased.

Ques. 6. Were you not aware of the fact, at the time you first called on Mrs. Pennybacker in regard to the land, that C. P. Huntin ton, in 1870, had employed your father, Albert Laidley, to buy certain lands in Cabell county for him, and that your father had, in fact, bought the land in controversy for C. P. Huntington?

Ans. No, sir; from 1869 to July, 1873, I was at the University of Virginia, and only home during vacations, and had — personal knowledge of my father's transactions with C. P. Huntington in purchasing the lands where the city of Huntington is located. I think my father contracted with Jno. M. Pennybacker for the purchase of the land in question, but I have no knowledge of the fact further than the papers show.

Ques. 7. Have you not been a practicing attorney in Cabell county since 1873?

Ans. Yes, sir.

Ques. 8. At the time you first called on Mrs. Pennybacker, was she making or setting up any claim to the land in controversy?

Ans. Not that I know of.

Ques. Did not Mrs. Pennybaker tell you when you called upon her regarding the land that she had sold it to C. P. Huntington; had no claim to it and made none?

Ans. She said that she and her husband had sold the land to Huntington; that Huntington had paid the $11,000 for it; that she did not know how she had any claim to it. After I informed her that the deed she had made to Huntington was void, because of a defective acknowledgment, she did not disclaim any interest or title to the land. In fact, she did not before I informed her say that she made no claim to the land, nor did she after I informed
395 her say that she made no claim to the land or anything to that effect, but before she understood that her deed was void she said, as I have stated, *the* she didn't know how she had any claim to it, and after she consulted her friends she neither declined to sue nor disclosed any interest in the land, but adopted the proposition to sell her interest rather than to sue for it.

And further this deponent sayeth not.

JOHN B. LAIDLEY.

No other witness appearing, the further taking of these depositions is continued until Tuesday, the 3d day of January, 1888, at the same place and between the same hours.

THOMAS A. WIATT,
Notary Public.

JANUARY 3D, 1888.

Pursuant to adjournment last above noted, the taking of these depositions is resumed, and, no other witness appearing, the further taking of these depositions is, at the request of John B. Laidley, continued until Wednesday, the 4th day of January, 1888, at the same place and between the same hours.

THOMAS A. WIATT,
Notary Public.

JANUARY 4, 1888.

Pursuant to adjournment last above noted, the taking of these depositions is resumed. No witness appearing, the further taking of these depositions is, at the request of attorney, Geo. F. Donnella, continued until Thursday, the 5th day of January, 1888, at the same place and between the same hours.

THOMAS A. WIATT,
Notary Public.

JANUARY 5TH, 1887.

Pursuant to adjournment last above noted, the taking of these depositions is resumed. No other witness appearing, the further taking of there depositions is, at the request of J. B. Laidley, continued until the 6th day of January, 1888, at the same place and between the same hours.

THOMAS A. WIATT,
Notary Public.

JAN. 6TH, 1888.

Pursuant to adjournment last above noted, the taking of these depositions is resumed. No other witness appearing, the further taking of these depositions is, at the request of George F. Donnella, attorney, continued till Saturday, the 7th day of January, 1888, at the same place and between the same hours.

THOMAS A. WIATT,
Notary Public.

396 JANUARY 7TH, 1888.

Pursuant to adjournment last above noted, the taking of these depositions is this day resumed.

Present: John B. Laidley, for himself, and F. B. Enslow for the Central Land Company.

P. A. ADKINS, being recalled for cross-examination by T. B. Enslow, answers questions as follows:

Ques. 1 (by F. B. Enslow). In your conversation with Mrs. Pennybacker did not she state that she and her husband had sold the land to C. P. Huntington and got the money for it?

Ans. I wouldn't be sure whether she said C. P. Huntington or the Central Land Company; it was one of the other. She said she got the money for it.

Ques. Did she say she made no claim to the land?

Ans. That was my impression. She said she diden't see how she could have any interest in the land.

Re-examined by J. B. LAIDLEY:

Ques. 1. In that conversation did she say whether or not I had told her that the deed she had made to me for the land was defective and void on account of the defective acknowledgment, or anything of that sort?

Ans. She said that Laidley said there was a defect in the deed, and that he would recover the whole of the land for one-half.

Ques. 2. Did she say anything about dower and the new constitution?

Ans. She said nothing about dower, and I heard nothing about the new constitution.

Questions objected to by F. B. Enslow as improper on re-examination and leading.

And further this deponent sayeth not.

P. A. ADKINS.

The further taking of these depositions is adjourned until 2 o'clock p. m. of this day at the same place.

THOMAS A. WIATT,
Notary Public.

JANUARY 7TH, 1888—2 o'clock p. m.

Pursuant to adjournment last above noted, the taking of these depositions is resumed, and, no witness appearing, the further taking of these depositions is, at the request of Geo. F. Donnella, attorney, adjourned until Monday, the 9th day of January, 1888, at the same place and between the same hours, to wit, the hours of 6 o'clock a. m. and 6 o'clock p. m.

THOMAS A. WIATT,
Notary Public.

397 JANUARY 9, 1888.

Pursuant to adjournment last above noted, the taking of these depositions is resumed, and, no witness appearing, the further taking of these depositions is, at the request of attorney, John B. Laidley, continued till Tuesday, the 10th day of January, 1888, at the same place and between the same hours.

THOMAS A. WIATT,
Notary Public.

JANUARY 10, 1888.

Pursuant to adjournment last above noted, the taking of these depositions is resumed.

Present: Geo. F. Donnella, for J. B. Laidley.

J. D. WELLMAN, another witness of lawful age, being sworn, deposes as follows:

Ques. 1 (by Geo. F. Donnella). State your name, age, residence, and occupation, and if you know the parties to this suit.

Ans. My name is J. D. Wellman; I am fifty-five years old; I reside on 7th avenue, in Huntington, W. Va.; I am a grocer by occupation; I know D. W. Emmons, J. B. Laidley, Mrs. Pennybacker, and some of the rest.

Ques. —. Please state if you ever had a conversation with Mrs. S. H. G. Pennybacker about her negotiations and sale to John B. Laidley of the land in controversy; and, if so, when and where was it and who was present and what that conversation was as near as you recollect, and are you acquainted with the land in controversy.

Ans. I am acquainted with the lands in controversy. I have had two conversations with Mrs. Pennybacker about her sale to John B. Laidley of the land in controversy. The first of these conversations occurred in the spring of 1883, in Huntington, W. Va., at my residence. I think my family was present. I think the second conversation occurred as Mrs. Pennybacker was driving with me and my family to Ceredo in the fall of 1883. In the first conversation she said that Mr. Laidley told her that there was a defect in the deed that she had made conveying away this land, and that he could recover it back for her for one half of the land. She told him her son Mason was at work for the rail- company, and that he would be discharged if she brought the suit. Mr. Laidley then agreed to give her $500.00 for her interest, and that if she got that she knew she would have that much certain, and that she would rather take the $500.00 and have that much certain than to bring the suit. The second conversation was substantially the same as the first. These conversations occurred after she had made the deed to John B. Laidley.

Ques. 3. Did Mrs. S. H. G. Pennybacker, in any of her conversations with you or in your presence at any time say that J. B. Laidley had told her that she had a dower in the land?

Ans. If she said anything about dower I don't recollect.

398 Ques. 4 (by same). Did she understand what she had sold to J. B. Laidley? Please state whether she sold the land you say you are acquainted with in controversy, or what.

Ans. I don't know what she understood she was selling. I know what she said. She said that Mr. Laidley said that he could set aside the deed and recover the land for one-half; that she preferred to take his offer of $500.00 to bring the suit in her own name, and that she had accordingly taken his offer of $500, and that he had paid her the first installment of $100 thereon. She said nothing about any dower interest that I remember of.

And further this deponent sayeth not

J. D. WELLMAN.

And, no other witness appearing, the further taking of these depositions is adjourned until tomorrow, January 11th, 1888, at the same place and between the same hours.

Given under my hand this 10th day of January, 1888.

THOMAS A. WIATT,
Notary Public.

JANUARY 11, 1888.

Pursuant to adjournment last above noted, the taking of these depositions is resumed.

Present: John B. Laidley, for himself; F. B. Enslow, attorney for the Central Land Company *et als.*

F. B. ENSLOW, a witness of lawful age, being duly sworn, deposes and says as follows:

Ques. 1 (by J. B. L.). State your name, age, residence, and occupation, and if you know the parties to these suits.

Ans. My name is F. B. Enslow. I am thirty-three years old, and live in Huntington, W. Va. I am a lawyer by profession. I know all the parties.

Ques. 2. Please state whether you purchased from Mrs. S. H. G. Pennybacker a note for $400, payable in installments, in 1882 or 1883, executed by John B. Laidley; and, if so, please state whether you had any conversations concerning the consideration of the note before you purchased it either with Mrs. Pennybacker or with Laidley; and, if so, please state fully the substance of such conversations as well as you now remember.

Ans. I purchased a note of such a description about six months after it was given and am certain that it was before the first installment on the note was due. Mrs. Pennybacker called on me a few days before I bought the note. I do not remember whether she said anything about the consideration of it or not. I think it is probable that she did. At any event I am positive that I was under the impression at the time of the first interview that the note was given for Mrs. Pennybacker's interest in the land in question in these suits as widow of John M. Pennybacker, deceased. I declined

to buy the note until I could investigate the matter for myself.
389 I examined the records of the county, found that Mrs. Pennybacker originally owned the land herself, and that it was not her husband's land, and that the deed that she executed to Mr. Laidley purported to convey the land to him in fee. I thereupon decided that Mr. Laidley would be bound for the note in any event, but before purchasing the note I called on Mr. Laidley and had a talk with him, and to the best of my recollection he told me that he would pay the note, and he told me for what the note was given. We had a full discussion of the matter between ourselves and I decided to buy the note. A few days afterward Mrs. Pennybacker came into my office and I bought the note of her. I do not remember that the subject of consideration was mentioned between us at the second interview. I had told her in the first interview what I would give her for the note if I decided to buy it. When she came in on the second day I simply paid her the money and took the note.

Ques. 3 (by John B. Laidley). You are attorney for the Central Land Company, the railroad company, and all of the parties to these suits except Mrs. Pennybacker and me, and you are also vice-president of the Bank of Huntington, are you not?

Ans. I am vice-president of the Bank of Huntington and am one of the counsel for the parties as mentioned.

Ques. 4. At the time you bought the note referred to the suit in ejectment for the land in controversy had been brought, had it not, and before you bought you called on me to know whether there were any offsets to the note or not, it not being negotiable, and what the consideration was?

Ans. I do not remember whether the suit had been brought or not. I know that on an examination of the records I found out the full state of the case. The note was not negotiable, and I called on Mr. Laidley to know if there were any offsets to it. He told me that the note was given for the land, and that there were no offsets to it.

Ques. 5. The conversation between you and me about the note, I believe, occurred in your law office, did it not, and in that conversation we discussed fully the transaction between me and Mrs. Pennybacker about the sale of the land and the *conversation* of the note, and in that conversation did you not say that even if I lost my suit I would still have to pay the note; that I could not plead no consideration, or anything of that sort or to that effect, and did I not agree with you as to that proposition as a question of law, and was anything said about a dower interest in that conversation or anything intimated of that sort?

Ans. Yes; we had several conversations. I do not remember the place or places, and the facts set out in the question are substantially correct. I do not remember anything being said about dower.

Ques. 6. Did Mrs. Pennybacker in any of her conversations with you say that the note was for her dower in the land?

Ans. I do not remember that she did.

Ques. 7. Did she not tell you that the note was given for the land?

Ans. As I have before stated, I do not remember that she did.
400 And further this deponent saith not.

F. B. ENSLOW.

STATE OF WEST VIRGINIA, *County of Cabell,* } *ss:*

I, Thomas A. Wiatt, a notary, of said county, do hereby certify that the foregoing depositions of P. A. Adkins, J. M. Noble, John B. Laidley, J. D. Wellman, and F. B. Enslow were duly taken, subscribed, and sworn to before me at the times and place for the purpose therein mentioned.

Given under my hand this 11th day of January, 1888.

THOMAS A. WIATT,
Notary Public.

The defendant S. H. G. Pennybacker objects to the reading of the foregoing depositions as to her, and assigns as reason for said objection that she had neither notice nor knowledge of the time or place of the taking of the same.

Feb. 8, 1888.

SARAH H. G. PENNYBACKER,
By COUNSEL.

The following are the receipts referred to in the deposition of J. B. Laidley, marked "T. A. W., notary":

HUNTINGTON, W. VA., *Sept.* 1, 1884.

Mr. J. B. Laidley to the city of Huntington, Dr.

Taxes for 1884.	Description.	Valuation.	Rate.	Am't.
Real estate	40 acres bottom land, @ $100	$4,000	80c.	32 00
	200 acres hill land, @ $20	4,000	80c.	32 00
	Total			64 00

Received payment Dec. 4, 1886.

JOHN H. OLEY,
City Treasurer.

HUNTINGTON, W. VA., *Sept.* 1, 1885.

Mr. John B. Laidley to the city of Huntington, Dr.

Taxes for 1885.	Description.	Valuation.	Rate.	Am't.
	40 acres bottom land	4,000	75	30 00
	200 acres hill land	4,000	75	30 00
Personal property				
Capitation				
	Total			60 00

Received payment.

JOHN H. OLEY,
City Treasurer.

401 Endorsed.

The levy for 1886 was 75 cents. I tendered to J. H. Oley, treasurer and collector for the city of Huntington, on the 4th day of Dec., 1886, at 3.36 o'clock —, the sum of sixty dollars for the payment of the taxes for the within land for the year 1886. The money was not received on the grounds assigned, that the lands were not on the books and were not assessed.

J. B. LAIDLEY.

No. 282.

STATE OF WEST VIRGINIA:

W. T. Thompson, treasurer.

TREASURER'S OFFICE,
CHARLESTON, *Dec.* 4, 1886.

Received of J. B. Laidley, by certificate of the Kanawha Valley bank, two hundred and eighty-one $\frac{91}{100}$ dollars, deposited therein to the credit of the treasury of West Virginia, which sum is to be credited to said sum on account of redemption of land.

State tax 18—	State tax	89 08
State tax 18—	County tax, Cabell	95 82
School tax 18—	County tax	
School tax 18—	Dist. tax, Guyandotte	97 00
License tax 18—		
Fines		
Fines		
		$281 90

$281.90.

Certificate of Redemption of Lands.

No. 477.

M. —— ——.

STATE OF WEST VIRGINIA, AUDITOR'S OFFICE, CHARLESTON, *Dec.* 6, 1886.

Name of person charged with taxes.	Quantity of land charged.	Local description of land.	For what taxes returned delinquent and sold.	Taxes.	Interest.
Laidley, J. B.....	200	City of Huntington (hill).. Guyandotte district, Cabell county.	Year.		
			1884.		
			State	$14 01	$1 69
			County	19 68	2 24
			District	17 49	2 09
			1885.		
			State	14 00	84
			County	13 20	79
			District	16 00	92
			1886.		
			State	14 00	
			County	12 00	
			District	12 00	
			Total	132 38	8 57

This certifies that Mr. J. B. Laidley, by payment into the State treasury of one hundred and forty $\frac{75}{100}$ dollars, evidenced by treasurer's receipt No. —, has redeemed the land above described, which has been heretofore returned delinquent and sold for non-payment of taxes, as herein set forth.

P. F. DUFFY, *Auditor.*

Recapitulation.

Total of taxes, damages, and interest for which sold.....	$51 18
Total taxes for which returned delinquent.....	81 20
Total interest since accrued.....	8 57
Office fee.....	2 00
Total cost of redemption	$142 95

No. 476.

M. — —.

STATE OF WEST VIRGINIA, AUDITOR'S OFFICE, CHARLESTON, *Dec.* 6, 1886.

Name of person charged with taxes.	Quantity of land charged.	Local description of land.	For what taxes returned delinquent and sold.		
			Year.	Taxes.	Interest.
Laidley, J. B.	40	City of Huntington (bot.). Guyandotte district, Cabell county.	1884.		
			State	$14 01	$1 69
			County	19 68	2 24
			District	17 49	2 09
			1885.		
			State	14 00	84
			County	13 20	79
			District	16 00	92
			1886.		
			State	14 00	
			County	12 00	
			District	12 00	
			Total	$132 38	$8 57

This certifies that Mr. J. B. Laidley, by payment into the State treasury of one hundred and forty $\frac{95}{100}$ dollars, evidenced by treasurer's receipt No. —, has redeemed the land above described, which has been heretofore returned delinquent and sold for non-payment of taxes, as herein set forth.

P. F. DUFFY, *Auditor.*

Recapitulation.

Total of taxes, damages, and interest for which sold	$51 18
Total taxes for which returned delinquent	81 20
Total interest since accrued	8 57
Office fee	2 00
Total cost of redemption	$142 95

404 The following deposition of Mrs. Jennie Donnella was taken on behalf of defendant John B. Laidley at the law office of Campbell & Donnella, in Huntington, W. Va., and filed the 6th day of February, 1888.

(Caption, &c., omitted.)

Present: F. B. Enslow, att'y for all except S. H. G. Pennybacker; —— Layne, att'y for her; John B. Laidley in person.

Mrs. J. DONNELLA, a witness of lawful age, being duly sworn, says:

Ques. 1. State your name, age, and residence, and whether or not you are acquainted with the parties to this suit.

Ans. My name is Jennie Donnella; I reside in Huntington, W. Va.; I am 39 years old; I am acquainted with Mr. John B. Laidley and Mrs. S. H. G. Pennybacker.

Ques. 2 (by same). Did Mrs. Sarah H. G. Pennybacker ever mention, in a conversation with you or in your presence, anything about a sale to J. B. Laidley of an interest in the land in controversy in these suits? If so, please state what she said in that conversation and the time and place thereof.

Ans. I can't do that; don't know where it was or what time; she has talked to me repeatedly. I don't remember where it was, but think it was at her own house. She told me that Mr. Laidley came to her and said that he offered to sue the Central Land Company for the land for one-half, and if he did not gain it she was to pay the costs. She said that she told Mr. Laidley she had no money to pay costs if he should fail, and that Mace, her son, was working for the R. R. company, and if she sued them they would discharge him, and he was her main dependence. Then she said that Mr. Laidley proposed to buy her right for $500.00, and she said she told him she did not think she had any right in it, and if he was fool enough to give her $500.00 she would take it. That is about all I remember.

Ques. 3 (by same). Were you and Mrs. S. H. G. Pennybacker on friendly relations; and did you visit each other frequently; and did you have more than one conversation on the subject?

The plaintiffs, The Central Land Company and others, object to the above question because it is leading, immaterial, and improper.

The def'ts Mrs. Pennybacker, by her att'y, objects on the same grounds and for the same reasons.

Ans. We were on friendly relations and we visited each other frequently. I don't remember that I had more than one conversation on that subject, but I have heard her speak of it frequently.

Ques. 4 (by same). Did she say, in the conversation referred to, what J. B. Laidley had told her he could recover for her?

The same parties make the same objections to the above question as was made to Ques. 3.

Ans. She told me he said he could recover the land.

Ques. 5 (by same). Did she, in the conversation referred to, say

anything about having a dower in the land; did she say at
405 any time that J. B. Laidley had told her she only had a dower in the land, or that she had sold a dower in the land to me, or anything to that effect?

The questions objected — because they are leading and improper.

Ans. She said nothing about having a dower in the land. She told me that Mr. Laidley told her that Mr. Pennybacker had no right to sell the land because it was hers, given to her by her father. I never heard her say anything about dower. She did not say at any time that J. B. Laidley had told her that she had a dower in the land and she — not say anything to that effect in my presence. I never heard her mention dower.

X e-amined by att'y for Central Land Co.:

1. What relation are you to Mr. George Donnella and has he any interest in the result of this suit?

Ans. I am sister-in-law to Geo. F. Donnella. I don't know.

Ques. 2. In what year did you first have any talk with Mrs. Pennybacker in regard to the land matter?

Ans. I think in the year of 1882. I can't tell what time in the year.

Ques. 3. When did you first talk with Mr. Geo. Donnella or tell him what you knew in this cause?

Ans. I never have told him all I have heard. I don't remember when I talked to him.

Ques. 4. Did Mrs. Pennybacker tell you in any of the conversations you had with her that she had a claim to the land under the new constitution of West Va.?

Ans. No, sir; she never.

Ques. 5. Do you know what a dower interest is under the laws of West Va.?

Ans. No, sir; I don't know anything about it.

6. Do you know when Mr. Laidley bought the land he claims from Mrs. Pennybacker?

Ans. No, sir.

Ques. 7. Have you seen Mrs. Pennybacker lately and are you and she on friendly terms now?

Ans. I have not seen her lately, but we are on friendly terms.

Ques. 8. Would you know what dower was if you could hear its nature explained?

Ans. Don't know whether I could or not.

Ques. 9. Did Mrs. Pennybacker tell you in any conversation that she had with you that Mr. Laidley wanted her to bring suit to recover the land from the land company, and that she had told him that she had sold the land to C. P. Huntington; had no claim and made none and did not desire to bring suit, and that Mr. Laidley then offered to bring suit for half of the land and, at her refusal, offered to give her $500 for *the* her interest in the land?

Ans. Mrs. Pennybacker did tell me that Laidley wanted her to

bring suit to recover the land. She said that her husband had sold the land, but did not say to whom, and said she told him she
406 could not see how she had any claim to the land; that she did not want to bring suit because she had no money to pay costs in case Mr. Laidley lost the suit, and her son was working for the R. R. company and they would discharge him; and Mr. Laidley offered to bring the suit for one-half of what he might recover, and that he had offered her $500.00, which she accepted.

—. Did Geo. F. Donnella at any time tell you that he had an interest in the result of this suit or interest in the second in controversy?

Ans. Some time ago he did.

—. Did he tell you what interest he had?

Ans. No, sir.

Ques. What did he say to you about an interest?

Ans. I don't know. I don't know that he was really talking to me. I have heard him speak of it. I know he never talked to me directly about it. He talked in my presence.

Ques. What did you hear him say?

Ans. I don't remember. I never paid any attention to it.

Ques. What interest do you understand that he has in the matter?

Ans. I don't know. I don't know anything about it.

Ques. Can't you tell us what you have heard about it?

Ans. No; I don't know that I can. I did not pay attention enough to it to tell anything about it.

Ques. State whether or not you understood that Mr. Donnella would be better off if Mr. Laidley were successful in this suit.

Ans. I think he will be somewhat better off.

And further this deponent saith not.

MRS. JENNIE DONNELLA.

(Certificate omitted.)

The following depositions were taken by consent on behalf of defendant John B. Laidley at the law office of Campbell & Donnella, in Huntington, Cabell county, W. Va., and filed the 7th day of May, 1888:

(Caption omitted.)

Present: John B. Laidley, for himself; F. B. Enslow, for the Central Land Company of West Virginia.

S. H. G. PENNYBACKER, a witness of lawful age, being duly sworn, deposes and says as follows:

The plaintiffs, The Central Land Company and its vendees, the plaintiffs in the second chancery suit, object to the deposition of Mrs. Pennybacker being a second time taken in these causes, on the ground that she has been examined and cross-examined heretofore, and that there has been no order of court to retake her deposition.

1st question (by J. B. Laidley). Please state whether you intended to ratify your sale to C. P. Huntington by your conversations with me when I called on you, in January, 1882, and proposed to
407 bring suit for half we might recover or to buy your claim if you preferred to sell rather than to sue.

The plaintiff objects to the above question because it is leading, improper, and has been in substance answered heretofore in these causes.

Ans. I didn't know anything about the sale to Huntington being defective.

2d question (by same). In the interview referred to did you tell me that you wanted your sale to Huntington to stand, or anything to that effect?

Ans. No, sir; I didn't.

3rd question (by same). Did you decline to bring suit against the company on the grounds that you were satisfied with the sale to Huntington or on the grounds that you did not wish to incur the risk of a lawsuit?

The plaintiff objects to the foregoing question as leading.

Ans. I refused to bring suit because my son was working for the company and I could not see that I had a dower. I didn't care to get into a lawsuit with the company, as I didn't have the money to carry on a lawsuit.

4th question (by same). Did you, at your interview with me when I was negotiating about the land in controversy, in Jan'y, 1882, decline to bring suit to recover your interest in the land on the grounds that you were satisfied with the sale to C. P. Huntington and did not wish to disturb it? And, if not, please state on what grounds you declined to bring suit.

Ans. I declined to bring suit because I didn't care to get into a lawsuit with the company, and I didn't know the deed was defective. If I had I would have brought the suit. I did not decline to bring suit on the grounds that I was satisfied with the sale.

5th question (by the same). Did you decline to sell to me on the grounds that you had sold to C. P. Huntington, had received the purchase-money, and had no claim or interest in the land?

Ans. I believe I declined to bring suit, for he told me it was a dower, and I couldn't see how I had a dower.

6th question. Did you ever decline to sell to me your interest or claim to the land?

Ans. No, sir; I didn't decline to sell.

7th question (by same). Please state whether you intended to ratify the sale to C. P. Huntington of the land in controversy made by your husband in any of your conversations with me when I called on you, in January, 1882.

Ans. No; I didn't intend to ratify the sale. I would not have ratified the sale if I had known the deed was defective.

Cross-examination:

1st Q. When Mr. Laidley called on you did you know that there was any defect in your deed to C. P. Huntington?

Ans. No, sir; I did not.

408 2nd Ques. Did Mr. Laidley tell you that you had title to this land in question?

Ans. He told me that I had a dower.

3rd Q. Did you not state to Laidley, at the time he was negotiating with you in regard to this sale of this land in controversy, that you had no claims to this land and made none to it?

Ans. I said my husband had sold it to C. P. Huntington.

4th Q. Did Mr. Laidley, at the time you executed the deed to him, know that you were not in possession of the land in controversy?

Ans. I suppose he did.

Q. 5th. Did he state to you any fact in regard to his knowledge concerning the possession of the land by the Central Land Company?

Ans. I don't remember of him telling me anything.

Q. 6th. Did he tell you, at or before the time you so told him, that he knew who was in possession of the land at that time?

Ans. I don't remember whether he did or not.

Q. 7th. At the time Mr. Laidley came to you to buy your interest in the land, were you making any claim of title to it?

Ans. No, sir.

And further this deponent sayeth not.

S. H. G. PENNYBACKER.

J. R. SHELTON, another witness of lawful age, being duly sworn, deposes and says as follows:

Q. 1st (by J. B. Laidley). State your name, age, residence, and occupation and if you know the parties to this suit.

Ans. Jos. R. Shelton. I am thirty-three years old. I live in Huntington, W. Va.; my occupation is deputy sheriff of Cabell county, W. Va. I have been deputy sheriff for about four years. I know some of the parties to this suit. I know J. B. Laidley, S. H. G. Pennybacker, D. W. Lemons, and other parties.

Q. 2nd. Did you ever have any conversation with Mrs. S. H. G. Pennybacker in reference to the transaction between J. B. Laidley and herself in regard to the purchase of her claim to the property in controversy in these suits? If so, please state what it was.

Ans. I had a conversation with S. H. G. Pennybacker in regard to the purchase of her claim by J. B. Laidley. I think it was in or near Tom Garland's store, in Huntington, W. Va. I had some taxes against her, and I asked her about the taxes and she there brought this matter up about selling her claim to John Laidley. I asked her how much she was to get. She told me that she was to get $500.00, and she rather boastingly said that she thought it was that much clear.

Q. 3d. Who were you collecting taxes for?

Ans. At that time I was deputy sheriff under Geo. McKendree, sheriff of Cabell county. I was then collecting the taxes for E. S. Buffington, who was deputy under E. Kyle, the sheriff who
409 immediately proceded Geo. McKendree. I was collecting the taxes for the years 1881, 1882, 1883, and 1884 for E. Buffington, deputy under E. Kyle, sheriff.

Q. 4th. In that conversation did Mrs. S. H. G. Pennybacker say anything about having sold her claim or interest in the land in controversy to J. B. Laidley? If so, did she say anything about what she had sold?

Ans. She did. She said she had sold her interest.

Question 5th. Did she say anything about having sold a dower interest?

Ans. She didn't mention anything about dower that I heard.

Q. 6th. Do you remember the time of this conversation?

Ans. I don't remember positively, but I think it was in the year 1884.

And further this deponent sayeth not.

JOS. R. SHELTON.

The further taking of these depositions is continued until the 2nd day of May, 1888, at the same place, on motion of J. B. Laidley, attorney.

THOMAS A. WIATT,
Notary Public.

MAY 2ND, 1888.

Pursuant to adjournment last above noted, the further taking of these depositions is resumed, but, no witness appearing, the further taking of these depositions is continued until the 3d day of May, 1888, at the same place and between the same hours.

THOMAS A. WIATT,
Notary Public.

MAY 3D, 1888.

Pursuant to adjournment last above noted, the further taking of these depositions is resumed, and, no witness appearing, the further taking of the same is continued until the 4th day of May, 1888, at the same place and between the same hours.

THOMAS A. WIATT,
Notary Public.

MAY 4TH, 1888.

Pursuant to adjournment last *about* noted, the further taking of these depositions is resumed.

Present: Jno. B. Laidley, att'y for defendant Jno. B. Laidley; Frank B. Enslow, attorney for the Central Land Company of West Virginia and its vendees.

D. W. LEMINS, a witness of lawful age, being first duly sworn, deposes as follows:

Q. 1st (by J. B. Laidley, attorney). State your name, age, residence, and occupation and if you know the parties to this suit.

Ans. My name is D. W. Lemons; I *I* am fifty-nine years
410 old; I reside in Huntington, West Virginia; I am the general superintendent of the Central Land Company of West Virginia; I know the parties.

Q. 2nd. Please state what is the rental value of the land in controversy from 1870 to 1882 by the year and what the land has been used for.

Ans. The bottom land has been used for *for* mining purposes mostly. There is about 75 acres of bottom land and about 150 acres of hill land. The bottom has been rented partly for money rent and partly on shares. That portion which we rented for money rent we got four dollars an acre for, and on that portion for grain rent we got about $4 an acre. The hill is timbered and has not been productive.

Ques. 3d. State what the annual income from the place has been.

Ans. In round numbers about $300.

Q. 4th. Was that from the farming part of the land, exclusive of the part occupied by the railroad company and the purchasers from the Central Land Company?

Ans. Yes.

Q. 5th. What is the rental value per annum of the parts or lots occupied by the railroad company and the tenants?

Ans. The rental value is nothing to the Central Land Company, because it has passed from their control.

Ques. 6th. The rental value of the land owned or claimed by the railroad company and the several lot-owners is worth at least $500 a year, is it not; and how many feet in the city of Huntington does the railroad occupy?

Ans. The railroad passes across the land in controversy in two places, on the main track and on the river. On the river it is between 2ond avenue and the river and below Seventh street, and on the main track it is below 8th street and between 7th and 8th avenues. I could make no other estimate on its rental value than for farming purposes, say $4 per acre.

Q. 7th. Did you ever have any conversation with Mrs. Pennybacker about her testimony or what she would testify in the ejectment suit between Jno. B. Laidley and the Central Land Company?

Ans. No; except I had heard what she said and I went and asked her if what she had said to Jno. B. Laidley was correct. I repeated what I had heard, and asked her if she was willing to testify to that. She replied that she was willing.

Q. 8th. Where did that interview occur?

Ans. I think it was at the gate going into her house. I met her at her gate on 7th avenue, where she was living on 7th av-n-e, below Tenth street.

Ques. 9th. Please state, if you can, the time of that interview.

Ans. It was a day or two before she testified at Barboursville.

Q. 10th. Do you know anything about a written guaranty signed by John B. Laidley to Mrs. Pennybacker, dated the 27th day of January, 1882, in which Laidley proposed not to sue Mrs. Pennybacker on her warranty of her deed to Laidley of the land in
411 controversy? If so, please state how it came to be offered in evidence in the ejectment case between Laidley and the company.

Ans. I never saw such paper and know nothing about it.

Q. 11th. Col., please state if Col. Hogeman, late att'y for the Central Land Co., ever had any interview with Mrs. S. H. G. Pennybacker before she testified at the trial in the ejectment case of J. B. Laidley against the Central Land Co., in Dec., 1884.

Ans. He had not to my knowledge. I have good reasons to believe he did not, for he didn't know she was in town till I brought her.

— 12th. Please state what sales the Central Land Company has made since the institution of this suit of the land in controversy for the making of brick, or since the year 1882 what sales, to whom, and at what price or profit, and is the making of brick on the land in controversy a perman-t improvement on the same?

Ans. Since 1882 the company has received nearly $400 for brick material from Morris Arthur, Chas. McCann, and J. M. Noble. I considered it an improvement in the manner in which it is taken, as it will drain back lands, which are now low and water standing on; therefore an improvement.

Question 13. What depth does that brick-making cut into the land at its deepest point?

Ans. It varies. It takes off a knoll, say, about 6 feet at its greatest depth. Our purpose is to bring it back to grade to operate for draining purposes; to reclaim 8 to 10 acres of ground that is now too wet to cultivate.

Cross-examination by F. B. Enslow:

Q. 1st. About what was the amount of taxes paid by the land company on the land in question each year since 1881?

Ans. I can't tell exactly; they were something less in '81 than in '87, but the annual tax is in the neighborhood of $600 a year.

Q 2nd. Who acted as agent for the purchase of the land on which the city of Huntington is now laid out, and who in the purchase of the Pennybacker land? State fully all the circumstances connected with the purchase.

Ans. I was, on the first of Feb'y, 1870, sent by C. P. Huntington to make a purchase of about 5,000 acres of land at the western terminus of the Chesapeake and Ohio railroad, or would be when completed to the Ohio river. It was then only built to the White Sulphur Springs. On my recommendation the purchase of that 5,000 acres was made below the Guyandotte river, and in order to see if the amount of land could be obtained I engaged Albert Laidley to get options on certain farms, the farm in controversy being one of

those farms. We had gotten figures on 2,300 acres—that is, we were willing to pay $130,000 for 2,300 acres—including the Pennybacker farm. I, as agent for Mr. Huntington, agreed to pay to Mr. Albert Laidley the sum of $130,000 with which to buy the
412 lands and perfect the titles to the 2,300 acres, which he did in the manner following. As to the Pennybacker farm, he remarked to me it would save the Government stamps by making the deed direct to C. P. Huntington, and the deed was so made.

Q. 3rd. At the time you brought this land for Mr. Huntington did you understand that you were buying the fee-simple title to the estate or only John M. Pennybacker'- life interest?

Ans. The fee-simple, as no other would have been acceptable, and the price paid for it, $11,000, was the price Pennybacker and wife asked and received for it.

Ques. 4th. To whom was the money paid, and how?

Ans. To Mrs. Pennybacker, by Albert Laidley, in cash. I got the money at Portsmouth, Ohio, and gave it to Albert Laidley in cash.

Q. 5th. Was Albert Laidley acting *acting* as agent for you in the purchase for Huntington?

Ans. He was assisting me. I furnished all the money from Mr. Huntington to Albert Laidley.

Re-examined by J. B. LAIDLEY, attorney:

Q. 1st. Was Jas. H. Ferguson attorney for C. P. Huntington in the purchase of this land, and did he, at any time, pass on the sufficiency of the certificate of acknowledgments of the deeds to Huntington or on the sufficiency of the deeds to pass the title to the land referred to in the amended and supplemental bill?

Objected to by attorney for the land company.

Ans. He was not the attorney for Huntington at that time, in my knowledge—that is, the time of the purchase. After the deeds were recorded I was informed that Mr. J. J. Tracy, secretary of the Central Land Company, requested Judge Ferguson to examine the titles to the property purchased for the Central Land Company by C. P. Huntington and by him conveyed to them.

Q. 2nd. Including the title to the land in controversy, I suppose?

Ans. Yes.

Ques. 3d. The contract between Albert Laidley and C. P. Huntington for 2,300 acres of land for $130,000 was in writing, was it not? If so, can you produce the contract or copy of it?

Ans. It was in writing, but I cannot produce the original or a copy. The original was probably returned. If there is a copy of it it is in the office of the Central Land Company, in New York city. I made the agreement between Albert Laidley and C. P. Huntington that Albert Laidley was to perfect the title to *to* 2,300 acres of land for $130,000, including the land in controversy.

Ques. 4. Please state what did the 2,300 acres include.

Ans. Nine farms on the Ohio river between Peter Buffington's

farm and Sam. Johnston's farm, including some of his own on the branch of Four Pole, excepting certain reservations. Huntington paid $11,000 for the land in controversy to Albert Laidley, and Albert Laidley paid it to the Pennybackers, so far as I know.

And further this deponent sayeth not.

D. W. EMMONS.

413 E. S. BUFFINGTON, another witness of lawful age, being first duly sworn, deposes as follows:

Ques. 1st (by J. B. Laidley, attorney for himself). State your name, age, residence, and if you know the parties to this suit.

Ans. My name is E. S. Buffington; I am forty years old, and reside in Huntington, West Virginia; I am a practicing physician by profession, and since 1881 have been deputy sheriff of Cabell county, W. Va.; I know most of the parties.

Q. 2ond. Have you had any conversation with S. H. G. Pennybacker in relation to her sale and conveyance of the land in controversy to John B. Laidley? If so, state when, where, and what it was, and what were the circumstances.

Ans. Yes; I have. I don't remember the date. The first conversation occurred at or near her home, in Huntington, West Virginia. It was either at her house or a neighbor near by. She mentioned that John Laidley had been to see her and spoke something about her getting back her land down there, and offered her to take it on the halves, or some portion of —, or to give her so much for the claim. She asked my advice about what she ought to do. I told her that as far as I knew that it belonged to the Central Land Company, and that neither she nor John Laidley had any right to it, and that she had better see her uncle Lishe Mitchell and Arthur Mitchell, her near relatives, and see what they advised her to do. I don't remember much more of the conversation that occurred at that time.

Q. 3d. Was that conversation before she had made her deed to John B. Laidley?

Ans. I think it was. I inferred that it was from what she said, as she asked me what she ought to do about it.

Q. 4th. Did you give Mrs. Pennybacker any opinion as to whether she had better bring suit for the land or whether she had better sell out to J. B. Laidley her claim?

Ans. I did; but I don't remember *wither* it was at the first conversation or a subsequent one.

Ques. 5th. What did you tell her it was best for her to do, in your opinion?

Ans. I told her that she had better take the money he had offered her. I think it was 500.

Q. 6th. State, if you can remember, anything further that she said in the conversation.

Ans. She jocularly remarked that she was going to get her land back, and that she would some day be rich. I talked to Mrs. Pennybacker several times about the matter, but I cannot state exactly

what she said, but I can only state the substance of what she said in the different conversations.

Ques. 7th. Did Mrs. Pennybacker say anything about her deed to C. P. Huntington for the land in controversy being defective? If so, please state what you can remember on that point.

Ans. Yes; she did. She said that John Laidley had told her so, and on that ground she was going to recover the land—that is, if she got it back at all; in other words, that was what a lawyer,
414 John Laidley, had told her; that the deed or acknowledgment was defective or something was wrong about it, and that he could recover the land back.

Q. 8th. Did she say anything then about dower?

Ans. Not to me.

Ques. 9th. Do you mean to say that in her several conversations with you she never told you that she had sold a dower interest in the land to J. B. Laidley?

Ans. I do. She did not.

Q. 10th. When she asked your advice whether she should bring suit on Laidley's proposition for one-half the land or sell out to Laidley did she say whether she was to sell a dower interest or whether she was to sell the land to Laidley?

Ans. She said nothing about dower, as I understood it. She was to sell her interest to Laidley.

Q. 11th. Did she say that Laidley had told her that she had a dower under the new constitution of West Virginia, and that was what he wanted to sue for on the shares, or that that was what he offered to buy, or anything to that effect?

Ans. No; she didn't say anything about any new constitution or about dower.

Ques. 12th. Has Mrs. Pennybacker had any conversation with you as to what you would say or testify to in reference to the interview or conversation had between you and her about selling to me?

Ans. I saw Mrs. Pennybacker and told her what I would have to swear if I was called up here, and she said that she didn't recollect her conversation with me; that she didn't want me to swear against her. I told her what I would have to swear to. This conversation occurred at Mrs. Pennybacker's house, on 7th avenue between 8th and Ninth streets, in Huntington, West Virginia. I went out to see her and told her what I would have to swear if I was called on. It occurred about two or three months ago

Q. 13th. Please state whether you are not a graduate of the Jefferson Medical College of Philadelphia, Pa.

Ans. I am.

The Central Land Company, by its attorney, objects to each and all of the foregoing questions to this witness, E. S. Buffington, on this ground, that they are leading and improper, and especially to question- 3d, 4th, 5th, 7th, 8th, 9th, 10th, 11th, and 12th as leading, and also objects to the answers thereto.

And further this deponent sayeth not.

E. S. BUFFINGTON.

(Certificate omitted.)

THE STATE OF WEST VIRGINIA:

At a circuit court held for Cabell county, at the court-house thereof, on the 9th day of December, 1887.

415 CENTRAL LAND COMPANY OF WEST VA. *vs.* J. B. LAIDLEY ET ALS. } In Chancery.

This day came Sarah H. G. Pennybacker, one of the defendants in the above-entitled cause, by counsel, and tendered her separate demurrer to the plaintiff's bill, which is ordered to be filed.

At a circuit court held for Cabell county, at the court-house thereof, on the 16th day of January, 1888.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA *vs.* J. B. LAIDLEY ET ALS. } In Chancery.

On motion of John B. Laidley, one of the defendants, and the judge of this court, the Hon. Ira J. McGinnis, deeming it improper in his opinion for him to preside at the hearing and trial of this cause, the same is removed to the circuit court of Summers county, there to be further proceeded in, tried, heard, and determined according to law, and the clerk is directed to forthwith transmit to the clerk of said court the original papers in this cause and a copy of the orders entered herein.

STATE OF WEST VIRGINIA, *Cabell County,* } *To wit:*

I, T. W. Peyton, clerk of the circuit court in and for the county of Cabell and State of West Virginia, do hereby certify that the foregoing is a true copy of all the orders made and entered in the chancery cause of The Central Land Company of West Virginia *vs.* John B. Laidley *et al.*

Given under my hand this 18th day of January, 1888.

T. W. PEYTON,
Clerk C. C. C. C.

STATE OF WEST VIRGINIA:

At a circuit court held for the county of Summers, at the court-house thereof, on the 13th day of February, 1888.

THE CENTRAL LAND CO. OF W. VA., Pl'ff, *vs.* JOHN B. LAIDLEY ET ALS., Def'ts. } In Ch'y.

This day the defendant John B. Laidley, by his counsel, produced in open court the original papers filed in this cause in the circuit court of Cabell county, and together with a certified transcript of the orders made in said cause by the circuit court of Cabell

county, and it appearing that by an order made in said suit by said circuit court of Cabell county that said cause has been removed to this court to be further tried, heard, and determined according to law—

416 And said papers and transcript are ordered to be filed and the said cause entered upon the chancery docket of this court.

And at another day, to wit, on the 16th day of February, 1888, the following order was entered:

THE CENTRAL LAND COMPANY OF W. VA., Pl'ff,
vs.
JOHN B. LAIDLEY ET ALS., Def'ts. } In Chancery.

This day this cause came on to be heard, and, upon motion of plaintiff, leave is given it to file its amended and supplemental bill in this cause, and, upon motion of defendant John B. Laidley, it is required to fil*l* their said amended and supplemental answer with the clerk of this court within thirty days from this date, and that said Laidley be required to file his demurrer thereto within ten days from the filing of the said amended and supplemental bill; and the plaintiff thereupon moved the court to continue this cause because the same was docketed herein at the present term of this court and because the plaintiff desires time to file its amended and supplemental bill as above and to enable them to take the depositions of C. P. Huntington, R. Mathew, D. W. Emmons, and others; which motion is sustained, but the plaintiff is required to speed and mature this cause for hearing at the next term of this court.

And at another day, to wit, on the 9th day of May, 1888, the following order was entered:

THE CENTRAL LAND CO. OF W. VA., Pl'ff,
vs.
JOHN B. LAIDLEY ET ALS., De'ts. } In Chancery.

This day the defendant John B. Laidley tendered his separate demurrer to the plaintiff's bill and amended and supplemental bill; to the filing of which demurrer no objections was made, and the same is ordered to be filed and was thereupon set down for argument; and thereupon the said John B. Laidley tendered his separate answer to the plaintiff's amended bill, and, there being no objections to the filing of the same, for reasons appearing to the court, the said answer was ordered to be filed; to which the plaintiff replies generally, and this cause is set for hearing thereon.

And now, at this day *day*, to wit, on the 14th day of May, 1888, the following order was entered:

THE CENTRAL LAND CO. OF W. VA., Pl'ff,
vs.
JOHN B. LAIDLEY ET ALS., Def'ts. } In Chancery.

This day this cause came on to be heard and determined upon the plaintiff's original bill and exhibits and the separate demurrers of the defendant- John B. Laidley and Sarah H. G. Pennybacker and the answer of John B. Laidley to said bill and upon the
417 plaintiff's amended and supplemental bill and exhibits, and the separate demurrers thereto of the defendants John B. Laidley and Sarah H. G. Pennybacker, and upon the separate answer of John B. Laidley to said amended and supplemental bill and general replication to said answer, and upon the depositions filed herein and the former orders and decrees made herein, and was argued by counsel.

Upon consideration whereof the said demurrers of the defendant J. B. Laidley are overruled by the court. It further seems to the court that the plaintiff is not entitled to the relief prayed for.

It is therefore adjudged, ordered, and decreed that the plaintiff's original and amended and supplemental bills be, and they are hereby, dismissed, and that the plaintiffs do pay to Sarah H. G. Pennybacker her costs about this suit in that behalf expended, and that the plaintiff do pay to the defendant John B. Laidley his costs about this suit in that behalf expended, including $20.00 attorney's fee as *as* allowed by statute; but this decree shall not effect any rights of Sarah H. G. Pennybacker concerning the lands in controversy; but on motion of the said plaintiff the execution of this decree is suspended for sixty days to enable the said plaintiff to apply to the supreme court of appeals, or a judge thereof, for an appeal and supersedeas from and to said decree, upon the said defendant or some responsible person for it entering into a bond, with good security, before the clerk of this court in the penalty of $500.00, conditioned according to law.

STATE OF WEST VIRGINIA, } *To wit:*
County of Summers, }

I, B. L. Hoge, clerk of the circuit court of said county, do certify that the above is a true and complete transcript of the record and proceedings in the case therein mentioned, as appears on record and file.

Given under my hand this 3rd day of July, 1888.

B. L. HOGE, *Clerk.*

Fee for Record, $65.00; postage, .50.
Printer's fee, $171.70.

WEST VIRGINIA, *To wit:*

At a supreme court of appeals held in Charleston, in Kanawha county, on the 14th day of November, 1890.

This day came the Central Land Company of West Virginia, by Simms & Enslow, Esqs., its attorneys, and presented a petition, duly

certified by counsel, praying for a writ of error and supersedeas to a judgment of the circuit court of Cabell county rendered on the 12th day of September, 1890, in two causes consolidated, in which John B. Laidley was plaintiff and the said petitioner was defendant, with a transcript of the record of the judgment aforesaid accompanying the petition, which being seen and inspected by the court, the writ of error and supersedeas prayed for is refused because
418 the court is of opinion that the judgment complained of is plainly right; and the petitioner desiring to present to the Supreme Court of the United States a petition for a writ of error to this judgment, leave is hereby given the said petitioner to withdraw the petition and transcript of record aforesaid for that purpose.

A copy from the record.

Seal Supreme Court of Appeals, West Virginia.

In testimony whereof, I, O. S. Long, clerk of the supreme court of appeals of the State of West Virginia, have hereunto set my hand and affixed the seal of our said supreme court of appeals this 15th day of November, 1890, and in the 28th year of the State.

O. S. LONG.

JOHN B. LAIDLEY *vs.* THE CENTRAL LAND COMPANY OF WEST VIRGINIA.	In Ejectment.
and	Consolidated.
SAME *vs.* SAME.	In Ejectment.

To the honorable the judges of the supreme court of appeals of West Virginia.

Your petitioner, The Central Land Company of West Virginia, most respectfully represents that it is aggrieved by a final judgment rendered by the circuit court of Cabell county on the 12th day of September, 1890, in the above-styled consolidated cases. A complete transcript of the record of said cases and the printed record of said cases that were heretofore in the *the* supreme court of appeals of this State are filed herewith as a part of this petition, from which records it will appear that in April, 1882, John B. Laidley instituted in the circuit court of Cabell county an action of ejectment against your petitioner and one against its tenants to recover the possession of a tract of land in the city of Huntington, Cabell county, West Virginia, containing two hundred and forty acres, which was bought by C. P. Huntington of John M. and Sarah H. G. Pennybacker on the 25th day of February, 1870, and sold by the said Huntington to the said land company on the 16th day of October, 1871, which company at that time took actual possession of the whole of said tract of land and has held possession thereof ever since.

Your petitioner alleges that the following material errors were

made by the court during the trial, to the injury of this petitioner, the defendant in said actions:

First. The court erred in permitting against defendant's objections the Summers circuit court order, as found on page 63 of the written record, to be read to the jury, and in refusing to allow the defendant to show by the evidence of H. C. Simms that the plaintiff had waived and changed that agreement since it was entered
419 as the order of the circuit court of Summers county. See the several exceptions of the defendant on page 76 and 77 of the written record.

Second. The court erred in giving all the instructions asked by the plaintiff to the jury as found on pages 125 to 129, inclusive.

Third. It was error in the court to refuse to give to the jury the two instructions asked by the defendant as set out on pages 130 and 131.

Fourth. It was error in the court to refuse to set aside the verdict of the jury and grant the defendant a new trial, as asked for on page 133.

Fifth. And for these and other errors apparent upon the face of the record your petitioner prays that a writ of error and supersedeas may be granted to said judgment, and that the same may be reviewed and reversed.

THE CENTRAL LAND COMPANY
OF WEST VIRGINIA,
By COUNSEL.

STATE OF WEST VIRGINIA, *Cabell County,* } *To wit:*

I, F. B. Enslow, a practicing attorney in the supreme court of appeals of West Virginia, do certify that in my opinion it is proper that the judgment above complained of should be reviewed by said court.

F. B. ENSLOW.

Signed and acknowledged before the undersigned, notary public, this the 7th day of October, 1890.

GEO. I. NEAL,
Notary Public in and for Cabell County, West Va.

The writ of error and supersedeas prayed for in the foregoing petition *is* respectfully refused.

Oct'r 11th, 1890.

J. W. ENGLISH,
A Judge of the Supreme Court of Appeals of West Va.

I refuse the writ of error and supersedeas asked for in the foregoing petition this 14th day of Octo., 1890.

HENRY BRANNON,
A Judge of the Supreme Court of Appeals of W. Va.

Writ refused.
A. C. SNYDER, *Judge, &c.*

Oct. 17, 1890.
43—105

(Endorsed:) Jno. B. Laidley *vs.* The Central Land Company of West Virginia, in ejectment, & Same *vs.* Same. In ejectment. Petition. Seal supreme court of appeals, West Virginia.

420 THE STATE OF WEST VIRGINIA:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 12th day of September, 1890.

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VA. } In Ejectment.

and

JOHN B. LAIDLEY
vs.
CENTRAL LAND COMPANY OF WEST VA. } In Ejectment. Consolidated.

Be it remembered that heretofore, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1887, the mandate of the supreme court of appeals in these causes was entered on the law order book of said court in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VA. } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VA. } In Ejectment. Consolidated.

A copy of the decision of the supreme court of appeals in this cause, certified by the clerk of that court, was this day presented to the court and is in these words, to wit:

WEST VIRGINIA, *To wit:*

At a supreme court of appeals held in Charleston, in Kanawha county, on the 26th day of November, 1887.

JOHN B. LAIDLEY, Plaintiff Below, Plaintiff in Error,
vs.
THE CENTRAL LAND COMPANY OF WEST VA., Defendant Below, Defendant in Error.

Upon a writ of error to a judgment of the circuit court of Cabell county, rendered on the 22d day of December, 1884, in two cases consolidated.

The court, having maturely considered the transcript of the record of the judgment aforesaid and the arguments of counsel thereon, is

of opinion, for reasons stated in writing and filed with the record, that there is error in said judgment. It is therefore considered by the court that the judgment of the circuit court of Cabell
421 county, rendered in these causes on the 22d day of December, 1884, be, and the same is hereby, set aside, reversed, and annulled, and that the plaintiff in error recover against the defendant in error his costs about the prosecution of his writ of error in this court in this behalf expended.

And this court proceeding to render such judgment in these cases as the circuit court of Cabell county should have rendered, it is considered that the verdict of the jury rendered in these cases be, and the same is hereby, set aside and a new trial is awarded, the costs of the former trial to abide the event of the suit; and these cases are remanded to the circuit court of Cabell county for a new trial there to be had therein according to the principals stated in the written opinion aforesaid, and to be further proceeded in according to law, which is ordered to be certified to the circuit court of Cabell county.

A copy from the record.

Attest: O. S. LONG, *Cl'k.*

In pursuance whereof it is considered that the judgment aforesaid of this court be, and the same is hereby, set aside, reversed, and annulled, and that the plaintiff recover against the defendant his costs by him about his writ of error in the supreme court of appeals expended.

And it is further considered that the verdict of the jury be, and the same is hereby, set aside, and a new trial is awarded the plaintiff, the costs of the former trial to abide the result of the suit.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 16th day of January, 1888, there was another order made and entered in these causes, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VA. } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VA. } In Ejectment. Consolidated.

On motion of John B. Laidley, the plaintiff in the above consolidated actions, and the judge of this court, the Hon. Ira J. McGinnis, deeming it improper, in his opinion, for him to preside at the trial and hearing of these actions, the same are ordered to be and are removed to the circuit court of Summers county, there to be further proceeded in, tried, heard, and determined according to law; and the clerk of this court is directed forthwith to transmit to the clerk

of said court the original papers in these actions and a copy of the orders entered herein.

422 And on another day, to wit:

At a circuit court held for Summers county, at the court-house thereof, on the 13th day of February, 1888, there was an order made and entered in these causes, which is in the words and figures following, to wit:

JOHN B. LAIDLEY, Pl't'f,
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA, Def't. } In Ejectment.

This day came the plaintiff, by attorney, and it appearing to the court that this action was by an order of the circuit court of Cabell county, made on the 16th day of January, 1888, removed to this court for further proceedings according to law, and the original papers filed in said action and a certified transcript of the orders made by said Cabell county circuit court in said action being produced in open court, on motion of the plaintiff, the said action is ordered to be docketed to be further tried, heard, and determined according to law, and said papers and transcript are ordered to be filed.

And at another day, to wit:

On the 14th day of May, 1888, the following order was entered:

JOHN B. LAIDLEY, Pl't'f,
vs.
THE CENTRAL LAND CO. OF W. VA., Def't. } In Ejectment.

This day came the parties, by their attorneys, and, on motion of the defendant, for reasons appearing to the court, this cause is continued.

And at another day, to wit:

On the 5th day of September, 1888, the following order was entered:

J. B. LAIDLEY, Pl't'f,
v.
THE CENTRAL LAND CO. OF W. VA., Def't, } In Ejectment.

and

J. B. LAIDLEY, Pl't'f,
vs.
THE CENTRAL LAND CO. OF W. VA., Def't. } In Ejectment. Consolidated.

This day came the plaintiff, by his attorneys, and the defendant, by its attorneys; and thereupon the defendant moved the court for a stay of proceedings in these causes until the decision of the supreme court on the appeal hereinafter mentioned, upon the

ground that there is pending in the supreme court of appeals in this State an appeal by the defendant from a decree in this court in the chancery cause of The Central Land Company of
423 West Virginia against said J. B. Laidley and others, and read in evidence in support of said motion the record of said chancery suit and of the appeal thereon; and the plaintiff resisted said motion, and insisted upon a trial of said action of ejectment, and the court, having fully considered the matters arising upon said motion, doth decide to stay said actions until the decision of the appellate court in said chancery cause, upon condition and not otherwise that said defendant, The Central Land Company of West Virginia, agrees here in open court that judgment be at once entered for the plaintiff in said actions of ejectment for the estate in fee-simple in the lands in the declarations in said actions described, without further defense in event the decree aforesaid in said chancery suit be affirmed upon said appeal so far as it relates to the title in the land, but judgment so to be entered to be without prejudice to the right of the defendant, if any it has, to compensation for any improvements it may have placed upon the lands in controversy; and thereupon the said defendant in open court accepted said stay of proceedings in said actions of ejectment upon the terms aforesaid.

And now, at this day, to wit, on the 6th day of May, 1889, the following order was entered:

JOHN B. LAIDLEY, Pl't'f,
vs.
THE CENTRAL LAND CO. OF W. VA., Def't, } In Ejectment.

and

JOHN B. LAIDLEY, Pl't'f,
vs.
THE CENTRAL LAND CO. OF W. VA., Def't. } In Ejectment.

This day came the parties, by their attorneys, and, on motion of the plaintiff, the surveyor of Cabell county is directed, after ten days' notice to the parties or their attorneys, to go upon the land in the declarations mentioned and do such surveying as either party may require, and make at least two fair plats thereof and return the same to court with his report; and, on motion of the defendant, The Central Land Company of West Virginia, and for reasons appearing to the court, it is ordered that these causes be remanded to the circuit court of Cabell county, from whence they were removed to this court, to be in said circuit court of Cabell county further proceeded in and determined, and the clerk of court is directed to make and certify copies of all orders entered in this court and transmit the same, with all the original papers herein, to the clerk of the circuit court of Cabell county; and these causes are stricken from this docket.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another
424 order made and entered in these causes, which is in the words and figures following, to wit:

JOHN B. LAIDLEY *vs.* CENTRAL LAND CO. OF W. VA.	In Ejectment.
SAME *vs.* SAME.	" "

* * * * * * *

(Eighteen cases.)

The foregoing nineteen cases having been remanded to this court from the circuit court of Summers county, on motion of plaintiff the same are now docketed and continued until the next term of this court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 12th day of May, 1890, there was another — made and entered in these causes, which is in the words and figures following, to wit:

JOHN B. LAIDLEY *vs.* THE CENTRAL LAND CO. OF W. VA.	In Ejectment.

and

JOHN B. LAIDLEY *vs.* THE CENTRAL LAND CO. OF W. VA.	In Ejectment. Consolidated.

This day came the parties, by their attorneys; and thereupon the defendant, by its attorneys, tendered a special plea to the jurisdiction of the court, to the filing of which the plaintiff objected, which objection, being argued by counsel, is sustained and said plea rejected; and thereupon the plaintiff tendered a certified copy of the record of the chancery suit of The Central Land Company of West Virginia against the said Laidley and others, lately pending in the circuit court of Summers county, and the same mentioned and referred to in the order in these causes entered on the 5th day of September, 1888, and also a certified copy of the mandate of the supreme court of appeals entered in said chancery cause on the appeal mentioned in said order of September 5th, 1888, which mandate and record are ordered to be filed; and thereupon the plaintiff moved the court to render judgment upon the said order of September 5th, 1888, and the agreement of the defendant therein contained in favor of the

plaintiff against the defendant for a fee-simple estate in the lands in the declaration mentioned, to which motion the defendant objected; and the court, not being advised as to what judgment it should render therein, takes time to consider thereof.

425 And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 13th day of May, 1890, there was another order entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND CO. OF W. VA. } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND CO. OF W. VA. } In Ejectment. Consolidated.

This day the defendant, The Central Land Company of West Virginia, appeared, by its attorneys, and tendered its claim and account for improvements made on the lands mentioned in plaintiff's declaration, and the same is ordered to be filed, which is done.

The defendant's claim for improvements referred to in the above order is in the words & figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND CO. OF W. VA. } In Ejectment.

and

SAME
vs.
SAME. } In Ejectment. Consolidated.

The Central Land Company, defendant, claims allowances for improvements made on the property mentioned in plaintiff's declaration before the institution of these actions and each one thereof to the amount of $5,000.00, which improvements consists of two dwelling-houses of the value of $2,000.00 each; outhouse in connection with same, $500, and one powder-house, $500.00.

And on the same day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 13th day of May, 1890, there was another order entered in these causes, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND CO. OF W. VA. } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND CO. OF W. VA. } In Ejectment. Consolidated.

This day again came the parties, by their attorneys, and
426 thereupon the court doth overrule the motion of the plaintiff, made on yesterday, for judgment against the defendant pursuant to the conditions and agreements of the order entered in this cause on the 5th day of September, 1888, and refused to enter said judgment, to which ruling of the court the plaintiff objected and excepted, and his said exceptions are saved to him.

And thereupon the plaintiff tendered his statement of his claim for profits and other damages which he means to demand in these suits, which is ordered to be filed; and, on his motion, it is ordered that the assessment of said damages and the allowances for improvements, if any, be pos-poned until after the verdict on the title is recorded.

Thereupon came a jury, to wit, Rezin Swann, Robert Caldwell, Conwelza Conner, H. C. Bellamy, Ewell Bias, Harvey Templeton, L. D. Hughes, Albert Keller, Henry Kratzer, L. G. Blankenship, B. F. Dillon, and John L. Dillon, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issues joined herein and a true verdict render according to the evidence, and, the jury having heard a part of the evidence, they were, with the assent of the parties, adjourned by the court until tomorrow morning at 8½ o'clock.

The plaintiff's claim for profits, &c., referred to in the above order is in the words and figures following, to wit:

The Central Land Co. of West Va. to John B. Laidley, Dr.

1890.

May 13th. To rents, issues, profits, & damages demanded by the plaintiff from the defendant for and upon the land in the declarations mentioned from the 26th day of January, 1882, till May 13th, 1890..... $15,000 00

As follows, to wit:

For profits upon said land for said time...	7,500 00
Rents, issues, and damages.....	7,500 00
	$15,000 00

J. F. BROWN,
CAMPBELL & HOLT,
W. E. CHILTON, *For Pl'ff.*

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 14th day of May, 1890, there was another order entered in these causes, which is in the words & figures following, to wit:

427

JOHN B. LAIDLEY *vs.* THE CENTRAL LAND CO. OF W. VA. and JOHN B. LAIDLEY *vs.* THE CENTRAL LAND CO. OF W. VA.	In Ejectment. Consolidated.

This day again came the parties, by their attorneys, and thereupon the jury that was sworn and impanneled on the trial of this cause on yesterday appeared in court pursuant to adjournment on yesterday.

And the jury, having fully heard the evidence and arguments of counsel, retired to their room to consider of their verdict, and after some time returned into court, and, not having agreed on a verdict, they were, with the assent of the parties, adjourned by the court until tomorrow morning at 6 o'clock.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 15th day of May, 1890, there was another order made in these causes, which is in the words and figures following, to wit:

JOHN B. LAIDLEY *vs.* THE CENTRAL LAND CO. OF WEST VA. and JOHN B. LAIDLEY *vs.* THE CENTRAL LAND CO. OF WEST VA.	In Ejectment. Consolidated.

This day again came the parties, by their attorneys, and thereupon the jury that was sworn and impanneled on the trial of this cause on a former day of the present term appeared in court, pursuant to adjournment on yesterday, and again retired to their room to consider of their verdict, and after some time returned into court, and, being unable to agree upon a verdict, they were, with the assent of the parties, discharged by the court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 4th day of September, 1890, there was another order made and entered in these causes, which is in the words and figures following, to wit:

428

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND CO. OF W. VA.
and
JOHN B. LAIDLEY
vs.
THE CENTRAL LAND CO. OF W. VA.

In Ejectment. Consolidated.

This day came the parties, by their attorneys, and thereupon came a jury, to wit, William Cooper, E. G. Blankenship, David Wolf, Phillip Merritt, Daniel Swann, Henry Lute, Jeremiah Ball, Jno. H. Williams, M. E. Bledsoe, Wm. Killgore, Clifton Bias, and John L. Porter, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein and a true verdict render according to the evidence; and the jury having heard a part of the evidence, they were, with the assent of the parties, adjourned by the court until tomorrow morning at 8 o'clock.

And on another day, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 5th day of September, 1890, there was another order entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND CO. OF W. VA.
and
JOHN B. LAIDLEY
vs.
THE CENTRAL LAND CO. OF W. VA.

In Ejectment. Consolidated.

This day again came the parties, by their attorneys, and thereupon the jury that was sworn and impanneled on the trial of this cause on a former day of the present term appeared in court pursuant to adjournment on yesterday; and the jury, having fully heard the evidence and arguments of counsel, retired to their room to consider of their verdict, and after some time returned into court and on their oaths do say:

"We, the jury, find for the plaintiff, John B. Laidley, the lands in the declaration mentioned and described by the metes and bounds reported by Surveyor Thornburg in his report filed in these causes, as follows, to wit: Beginning at the north end of the upper line on the Ohio river, thence S. 16° 26′ E., crossing the south line of Second avenue nine feet west of the southwest corner of Second avenue and Seventh street (in the city of Huntington), and from this point measuring 6,376 feet, crossing the Chesapeake and Ohio railroad and Four-pole creek to a stake; thence south 2° 18′ east, passing through a large white-oak line tree standing on or near the top of the river hill at 986 feet and continuing the same course for 2,368 feet, making in all 3,354 feet, to a stone, from which an 18-inch chestnut oak

marked as a side line bears N. 2½ W. 22 feet (the stone sets
429 where the chestnut-oak corner tree stood); thence with old Beuhring line S. 49° 42′ W. 2,439 feet to a stake; thence leaving the Beuhring line N. 52° 30′ west 636½ feet to a white oak, north 13° 35′ E. 1,929 feet to a black oak and a white oak, N. 72° 15′ east 835 feet to a white oak, N. 32° 56′ east 900 feet to where two white oaks stood, N. 10° 20′ west 1,937 feet to a stake in the creek bottom, S. 73° 25′ west 32.34 feet to a stake; thence N. 16° 35′ west, crossing Four-pole creek and the railroad and at 5,962 feet crossing the south line of Second avenue 124½ feet easterly from the southeast corner of Fifth street and Second avenue and continuing thence the same course to the Ohio river; thence up the river N. 75° 40′ east 784¾ feet to the beginning, excepting therefrom the following-described property, to wit:

Beginning at a point on the upper line of the entire tract about 14 feet south of the south line of Fifth avenue (in the city of Huntington), thence south 69¾° west, with the old turnpike, 210 feet; south 16° 26′ east 210 feet; N. 69¾ east 210 feet to the upper line, and with it north 16° 26′ west 210 feet to the beginning, and that the plaintiff hath an estate in fee-simple in the lands so found for him."

Thereupon the defendant, The Central Land Company of West Virginia, by its attorneys, moved the court to set aside the verdict of the jury rendered herein as aforesaid on the grounds that the same is contrary to the law and the evidence.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 12th day of September, 1890, there was another order entered in these causes, which is in the words & figures following, to wit:

JOHN B. LAIDLEY *vs.* CENTRAL LAND CO. OF W. VA. and JOHN B. LAIDLEY *vs.* CENTRAL LAND CO. OF W. VA.	In Ejectment. Consolidated.

This day came again the parties, by their attorneys; and thereupon the defendant's motion to set aside the verdict of the jury rendered herein on a former day of the present term and to grant it a new trial being argued and considered is overruled by the court.

And the parties waived a jury and submitted to the court in lieu of a jury the question of the damages and mesne profits to said plaintiff and the allowance to said defendant for improvements made by the defendant on said premises described in the verdict of the jury herein; and the court, after hearing the evidence and arguments of counsel and after setting off the amount allowed the

plaintiff for the annual value of said premises against the
430 amount allowed the said defendant for improvements, the court doth find for the said plaintiff one cent.

It is therefore considered by the court that the plaintiff, John B. Laidley, recover of the defendant the possession of the said premises according to the verdict of the jury herein and one cent found by the court, together with his costs about the prosecution of his said actions in that behalf expended, including $10.00 allowed by law; and a writ is awarded the plaintiff, to the sheriff of Cabell county to be directed, to cause him to have the possession of his premises aforesaid.

Thereupon, on application of the defendant, it is ordered that the execution of this judgment be suspended for a period of sixty days to enable it to present its petition to the supreme court of appeals or a judge thereof in vacation for a writ of error thereto upon it or some one for it giving bond before the clerk of this court in the penalty of $1,000.00 and conditioned according to law.

MEMORANDUM.—Be it remembered that on this day the defendant tendered one several bills of exceptions to the rulings, opinions, and decisions of the court during the trial of this cause, which are in the words and figures following, to wit:

Bill of Exceptions.

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment. Consolidated.

Be it remembered that upon the trial of these consolidated actions the plaintiff, to maintain the issues joined therein on his part, introduced and read in evidence to the jury the following deeds, records, and writings, to wit:

1. A deed from Rebecca J. Everett to Sarah H. G. Pennybacker, dated the 18th day of August, 1855, and the certificates of acknowledgement and recordation thereon endorsed, in the words and figures following, to wit:

Know all men by these presents; that I Rebecca J. Everett of the county of Lawrence and State of Ohio, for and in consideration of eight thousand dollars, to me in hand paid by Mrs. Sarah H. G. Pennybacker, of Wood county, W. Va. have bargained and sold and by these presents grant, bargain, sell, convey, unto the said S. H. G. Pennybacker the following-described real estate, situate in Cabell county, W. Va., to wit: Being lot No. 4 in the division of a tract of land inherited from Isaac Frampton, Jr., by Ephriam M.

Frampton, David Frampton, Hiram Frampton and the said
431 Rebecca J. Everett, and by and in accordance of decrees of the circuit court of Cabell county, — Va., dated respectively Nov. 1862, and March 1863. John Laidley, a special commissioner, appointed for the purpose of deeding said tract, did accordingly deed to the said R. J. Everett the following-described tract, which is now by her deeded to the said Sarah H. G. Pennybacker, to wit: Beginning at a stake, corner of lot No. 3 on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. two poles and three links, N. 70¾ E. 1 pole and 24 links to a stake from which the above sycamore stands N. 33 W. 3 poles and 7 links, and another stands 52½ E. 3 poles and six links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the S. E. corner of the Brown tract, thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the place of beginning: containing 240 acres, more or less; to have and to hold the premises aforesaid, unto the said Sarah H. G. Pennybacker, her heirs and assigns forever. And the said Rebecca J. Everett, for herself, her heirs and assigns covenants with the said Sarah H. G. Pennybacker, that she is lawfully seized of the premises aforesaid, that the premises and appurtenances are free and clear from all incumbrance and that she will forever warrant and defend the same to the said Pennybacker, her heirs and assigns, against the lawful claims of all persons whomsoever.

In witness whereof I have hereunto set my hand and seal this 18th day of August, A. D. one thousand, eight hundred and sixty-five.

R. J. EVERETT. [SEAL.]

[Revenue stamps, $8.00.]

In presence of—

JAMES A. BARTRAM.
JENNIE RANIE.

STATE OF OHIO, *Lawrence County,* } *ss:*

Before me, the undersigned authority in and for said county, personally came the above-named Rebecca J. Everett and acknowledged the signing and sealing of the foregoing conveyance to be her voluntary act and deed this 18th day of August, 1865.

[Notarial Seal, Lawrence County, Ohio.]

JAMES A. BARTRAM,
Notary Public, Lawrence County, Ohio.

RECORDER'S OFFICE, }
Cabell County, West Virginia, } *ss:*

This deed, from Rebecca J. Everett to S. H. G. Pennybacker, was this day presented to me, the recorder of the county and State
432 aforesaid, together with the certificate of acknowledgement thereon endorsed. The same is admitted to record.
Given under my hand this 7th day of Feb'y, 1866.

THOS. J. F. HAYSLIP, *Dept.*,
For THOS. J. HAYSLIP, *Recorder.*

2. A deed from Sarah H. G. Pennybacker to the plaintiff, John B. Laidley, dated the 26th day of January, 1882, and the certificates of acknowledgement and recordation thereon endorsed, in the words and figures following, to wit:

This deed made this 26th day of Jan'y 1882 between Sarah H. G. Pennybacker, of the first part, and John B. Laidley, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of five hundred dollars, the receipt whereof is hereby acknowledged, doth grant unto the party of the second part, and doth bargain sell and convey unto him all that certain tract of land situate in the city of Huntington, county of Cabell and State of West Virginia, containing 240 acres, known as lot No. 4, in the partition of the estate of Isaac Frampton, Jr., deceased, and conveyed to the said Sarah H. G. Pennybacker by Rebecca J. Everett, by deed bearing date the 18th day of August A. D. 1865, and recorded in the county court clerk's office of Cabell county, Deed Book (A), page 236; for further description reference is made to said deed. Reserving one acre, including the brick house on Fifth avenue. And the said party of the first part does hereby covenant with the party of the second part, that she will warrant generally the property hereby conveyed.

Witness the following signature and seal.

S. H. G. PENNYBACKER. [SEAL.]

THE STATE OF WEST VIRGINIA, }
Cabell County, } *ss:*

I, F. F. McCullough, a notary public in and for the county aforesaid, do certify that S. H. Pennybacker, whose name is signed to the writing above, bearing date on the 26th day of January, 1882, has this day acknowledged the same before me in my said county.
Given under my hand this 26th day of January, 1882.

F. F. McCULLOUGH,
Notary Public, Cabell Co., W. Va.

STATE OF WEST VIRGINIA:

In the clerk's office of the county court of Cabell county, in the State aforesaid.

This deed, from S. H. G. Pennybacker to John B. Laidley, bearing date the 26th day of January, 1882, was this day presented to me,

the clerk of county court aforesaid, and the same, together with the certificate of acknowledgement thereon endorsed, is admitted to record in my office aforesaid.

433 Given under my hand this 26th day of January, 1882, at 9 o'clock and 30 minutes p. m.

M. S. THORNBURG,
Clerk of Cabell County Court.

STATE OF WEST VIRGINIA, *Cabell County,* } *ss:*

I, M. S. Thornburg, clerk of the county court of said county, do certify that the foregoing is a true copy of a deed from S. H. G. Pennybacker to John B. Laidley, recorded in Deed Book "I," new series, page 23, of the records of Cabell county, W. Va.

Teste:

M. S. THORNBURG,
Clerk of Cabell County Court.

3. A paper purporting to be a deed from John M. Pennybacker and Sarah H. G. Pennybacker, his wife, to C. P. Huntington, dated the 25th day of February, 1870, and the certificates of acknowledgement and recordation thereon endorsed, in the words and figures following, to wit:

Know all men by these presents:

That we, John M. Pennybacker and Sarah H. G. Pennybacker, of the county of Cabell and State of West Virginia, parties of the first part, and C. P. Huntington, of the city, county and State of New York, of the second part,

Witnesseth, that the parties of the first part, in consideration of eleven thousand dollars, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey to the said C. P. Huntington, his heirs and assigns forever, all that certain tract or parcel of land, situate, lying and being in the county of Cabell and State of West Virginia, on the Ohio river, about three miles below the mouth of the Guyandotte river, and bounded as follows, to wit: Beginning at a stake, corner of lot No. 3 in the division of the lands of Isaac Frampton, on the Ohio river, S. 19¼° E. 377 poles to a stake, from which a small sycamore stands S. 1½ east two poles and three links, N. 70¾ east one pole and 24 links to a stake, from which the above sycamore bears N. 33° W. three poles and 7 links, and another bears 32½ E. 3 poles and 6 links, thence S. 13° E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40° E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the S. E. corner of the Brown tract, thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the place of beginning; containing 240 acres, more or less; subject, however, to a reservation of one acre of land at the corner of the field where the lane and the turnpike road intersect,

and whereon a grocery storehouse stands. Beginning at a stake on the side of the turnpike road and the west side of Beuhring's lane on my line, thence with the turnpike two hundred and ten feet to a stake; thence S. 19 E. 210 feet to a stake; thence east and par-
434 allel with turnpike 210 feet to a stake in my line; thence with said line N. 19° W. 210 feet to the beginning. The title of which land is hereby retained and reserved to S. H. G. Pennybacker, as if this deed was never made. Also, the right to occupy the land for the present year, work the same and apply the crop for his own use; but to allow said Huntington to work on the same for any purpose in building and completing the Chesapeake and Ohio R. road and its appurtenances. And all the estate, title and interest of the said John M. Pennybacker and Sarah H. G. Pennybacker either in law or equity of, in and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof, to have and to hold the same to the only proper use of the said C. P. Huntington, his heirs & assigns forever. And the said John M. Pennybacker and Sarah H. G. Pennybacker, for themselves and for their heirs, executors and administrators, do hereby covenant with the said C. P. Huntington, his heirs and assigns that they are the true and lawful owners of the said premises and have full power to convey the same; that the title so conveyed is clear, free and unencumbered; and further that they will generally warrant and defend the same against all claim or claims of all persons whomsoever.

In witness whereof, the said John M. Pennybacker and Sarah H. G. Pennybacker have hereunto set their hands and seals this 25th day of February, in the year of our Lord one thousand eight hundred and seventy.

JOHN M. PENNYBACKER. [SEAL.]
S. H. PENNYBACKER. [SEAL.]

Signed, executed and acknowledged in the presence of us.

——— ———.

[U. S. revenue stamp, eleven dollars ($11.00).]

GUYANDOTTE TOWNSHIP, } ss:
The State of West Virginia, County of Cabell, }

Be it rem-bered that on the 25th day of February, in the year of our Lord one thousand eight hundred and seventy, before me personally came John M. Pennybacker, party and granter in the foregoing deed, and acknowledged the signing thereof to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my seal on the day and year aforesaid.

THO. J. HAYSLIP, *Recorder.* [SEAL.]

STATE OF WEST VIRGINIA, }
County of Cabell. }

Personally came before me, the undersigned, recorder of the county and State aforesaid, Sarah H. G. Pennybacker, wife of the above-mentioned John Pennybacker and party to the foregoing
435 deed, and, being examined by me privily and apart from her husband and having the deed aforesaid fully explained to her, she, the said Sarah H. G. Pennybacker, acknowledged that she had willingly signed, sealed, and delivered the same and wished not to retract it.

Given under my hand and seal this 25th of February, 1870.

THO. J. HAYSLIP, *Recorder.* [SEAL.]

RECORDER'S OFFICE, }
Cabell County, West Virginia, } ss:

This deed, from J. M. Pennybacker and wife to C. P. Huntington, was this day presented to me, the recorder of the county and State as aforesaid, together with the certificates of acknowledgement thereon endorsed. The same is admitted to record.

Given under my hand this 31st day of March, 1870.

THO. J. HAYSLIP, *Recorder,*
By THOS. J. P. HAYSLIP, *Dept.*

A true copy from the record.
Teste:

M. S. THORNBURG,
Clerk C. C. C.

The plaintiff accompanied the offering of this deed with the statement that he would ask the court to instruct the jury as to its legal effect before the case was submitted to the jury.

4. A deed from C. P. Huntington to the defendant, The Central Land Company of West Virginia, dated the 16th day of October, 1871, and the certificates of acknowledgement and recordation thereon endorsed, in the words and figures following, to wit:

This deed, made the sixteenth day of October, in the year one thousand, eight hundred and seventy-one, between Collis P. Huntington, of the city, county and State of New York, and Elizabeth S., his wife, parties of the first part, and the Central Land Company of West Virginia, a corporation created by and under the laws of the State of West Virginia, party of the second part,

Witnesseth, that in consideration of the sum of six hundred thousand dollars, the said parties of the first part do grant unto the said part- of the second part, all those certain tracts, pieces or parcels of land situate, lying and being in the county of Cabell and State of West Virginia.

First. All that certain piece or parcel of land bounded and described as follows, to wit: Beginning at a stake on the bank of the Ohio river, 68 poles above Wm. H. Hagan's upper corner, thence S. 15½ W. 224 poles to a pile of stone on the railroad, thence with

the railroad N. 77 E. 39 poles and 5 links to a stake, then leaving the R. road S. 7 E. 274 poles to a white oak, S. 3 E. 278 poles to a stake on the military line, and with it N. 89 E. to Mrs. Rickett's line, and with it N. 3 east to John Everett's land and with his line N. 3 east to the first run on the right-hand side of the Guyandotte river and with the meanders of said run to the Guyandotte river, thence down the west bank of said river, including its banks
436 and shores to the Ohio river, thence down the Ohio river, including its banks, shores and water privile*d*ges, to the beginning; containing four hundred and thirty-four acres, more or less; being the same premises which were conveyed to said C. P. Huntington by James H. Buffington and Columbia L., his wife, by deed dated February 14th, 1870, recorded in the recorder's office of said Cabell county, March 22nd, 1870, in Deed — B, page 408.

Second. All that certain piece or parcel of land lying and being on the Ohio river and bounded and described as follows, to wit: Beginning at a stake on the bank of said river, upper corner to the land claimed by the heirs of John Laidley, dec'd, thence with the upper line of said Laidley's land to a line of a tract of land now owned by P. C. Buffington, thence with the north line of the same to a white oak and dogwood, corner to the Hagan tract, thence with the lower line of the same to a stake on the bank of said river, thence down said river and binding thereon to the beginning; containing two hundred and fifty-eight acres, be the same more or less, being the same premises conveyed to the said C. P. Huntington by John N. Buffington of said Cabell county, by deed dated the 23rd day of July, 1870, recorded in the recorder's office of said county of Cabell, July 27, 1870, in Deed Book B, folio 508.

Third. All that certain tract of land situate in said Cabell county, West Virginia, containing four — and fifty-six acres, more or less, and described generally as follows: Beginning at a stake on the Ohio river, corner, formerly, of John N. Buffington and John Laidley, now, or late, of C. P. Huntington and Albert Laidley, thence southerly and with — line late of said Huntington to the corner late of said Huntington, Laidley and P. C. Buffington; thence westerly with the southern line of said Laidley's tract to the line of the tract formerly owned by William H. Buffington; thence southerly and westerly with the boundary line of said tract to the line of the tract formerly owned by Wm. Paine; thence with the boundary line of P. C. Buffington; thence northerly with the line of said Buffington to the Ohio river; thence easterly and with said river to the beginning; being the same premises which were conveyed to the said C. P. Huntington by Albert Laidley and Vesta, his wife, by deed dated October 20th, 1870, recorded in the recorder's office of said county of Cabell, on the 22nd day of October, 1870, in Deed Book C, folio 2, subject to the reservations and exceptions contained in said deed.

Fourth. All those certain tracts or parcels of land situate in said county which in a certain deed executed by Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated April 13th, 1870,

recorded in the recorder's office of said county, April 16th, 1870, in Deed Book B, 445, *an* bounded and described as follows, to *wit*: One tract containing two hundred and ninety-nine acres, bounded and described as follows: Beginning at a stake, northeast corner of S. W. Johnston's land and running with the upper line thereof, S. 20¾° E. 308 p. to a stake, thence N. 80° W. 3 poles and 18 links to a stone; thence S. 75° W. 115 p. to a stone near a sycamore tree, southwest corner of S. W. Johnston's land; thence S. 21° E.
437 112 po. to a stake in Watson's line at a dogwood; thence with said Watson's line S. 68 W. 60 po. to the dogwood corner; thence S. 21° W. 36 po. to two white oaks, beeches and sugar tree, S. 10° W. 114 p. to three wht. oaks on a ridge, S. 65 E. 48 poles to two white oaks, N. 84° E. 46 poles to white oak and locust stump, N. 49 E. 160 po. to a black oak and chestnut oak, S. 88 W. 110 p. to a stake from which a black walnut —, N. 21½ E. 2 p. and 7 links, and an apple tree S. 29½ W. 4 po., stands north 29 E. 186 p. to a chestnut oak on a hillside, N. 33 E. 61 po. to two double willows, N. 20 W. 186 po. to a stone, S. 70 W. 25 poles and 15 links to a stone, N. 20° W. 121 po. to a stake in the Ohio river, S. 70 W. 53 poles and 16 links to the beginning; it being the same which was conveyed to me on the 22nd day of March, 1870, by deed of Jno. L. Johnston and Mary Jane, his wife, and Wm. L. Johnston and Susan, his wife, by deed recorded in Deed Book B, page 422, of Cabell county.

One tract containing one hundred and ten acres, situate in Cabell county and bounded on the southeast by F. D. Beuhring, on the east by E. M. Frampton, and on the north by the lands formerly of Wm. L. and J. L. Johnston and hereinbefore described, and parcel of a certain tract of 800 acres of the said Laidley, fully described in a deed of O. A. and E. McGinnis, recorded in Deed Book J, page 441 of Cabell county, which is to be laid off by the party of the second part, or under his directions, by lines which shall not cross the Porterfield ridge, and the *meets*, bounds and abuttals so established shall be regarded as the *meets*, bounds and abuttals intended by this conveyance, but not including one and half acres sold to Sam'l Allen by said Laidley; and also his entire interest in a tract of land containing 240 acres, purchased of J. M. Pennybacker and wife by said Laidley, and conveyed by his directions to C. P. Huntington, the title to which said Laidley covenants to warrant and defend generally.

Fifth. All those three certain tracts or parcels of land situate in said county, which in a certain deed executed by the said Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated July 25th, 1870, recorded in the recorder's office of said county, July 25th, 1870, in Deed Book "B," folio 505, and bounded and described as follows, to wit: One containing seven hundred acres, known as the Everett farm and bounded on the north by the Ohio river, on the west by the lands of C. P. Huntington, on the east by the lands of J. M. Hanley, on the south by the lands of F. D. K. Beuhring and others, the said tract being fully described in a deed from F. B. Kline,

special com'r, to Albert Laidley, recorded in Deed Book B, folio 499, Cabell county, W. Va.

One other tract containing two hundred and forty-two acres, known as the Ephraim Frampton farm, and described as follows: Bounded on the north by the Ohio river, on the east by the lands of C. P. Huntington, on the west by the lands of A. Laidley, and on the south by the lands of A. Laidley, and fully described in a deed of E. M. Frampton and wife to A. Laidley, recorded in Deed Book B, folio 500, Cabell county, W. Va.; excepting from the quantities in said deed a lot of one acre conveyed by A. Laidley
438 to Nancy M. Frampton by deed describing the same and recorded in Deed Book B, folio 501, Cabell county.

And one tract containing two hundred and seven acres and known as the Dr. McCullough land and described as follows: Bounded on the north by the Ohio river, on the east by the lands of A. Laidley (and herein conveyed), on the west by the lands of C. P. Huntington, on the south by Laidley and Huntington; the same being fully described in a deed by T. B. Kline, special com'r, and P. H. McCullough and wife to A. Laidley, excepting two lots of fifty feet in width by one hundred feet in length, recorded in said deed. The said several tracts making in the aggregate eleven hundred and forty-nine, of which is excepted and reserved from this grant the lot of one acre above referred to; also, the two lots of five thousand feet each, above referred to; also, a lot of six acres conveyed by A. Laidley and wife to F. D. K. Beuhring by deed recorded in Deed Book B, folio 503, Cabell county, W. Va.

Sixth. All those two certain tracts or parcels of land situate in said county, which in a certain deed executed by said Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated October 20th, 1870, recorded in the recorder's office of said county, October 22, 1870, in Deed Book C, folio 1, and bounded and described as follows, to wit:

One tract beginning at a stake on the Ohio river, corner of C. P. Huntington and Albert Laidley, formerly of C. Everett and John M. Hanly, thence southerly and with the line of C. P. Huntington to the southwestern corner of said J. M. Hanley tract; thence easterly and northerly with the boundary lines of said tract to the Ohio river; thence westerly and with the Ohio river to the beginning; the said tract containing three hundred acres, more or less.

The other tract, also situate in said county, adjoining the above-described tract, being bounded and described as follows, to wit:

Commencing at a stake on the Ohio river in the line of P. C. Buffington and Albert Laidley, formerly William P. Holderby; thence S. 5½ E. 1,173 feet to the corner of the Marshall College lot, S. 47¾ W. 564 ft. to a stake, S. 50°, 10′ W. 875½ feet to the northwestern corner of said college lot, S. 50° 10′ W. 1,343½ — to a stake on the line, formerly, of J. H. Poage, thence with the line of said Poage S. 17½, E. 1,355 ft. to a stake fifty feet south of the center line of the Chesapeake and Ohio r'road as at present located; thence parallel with said center line of said road S. 77°, 15′, W. 1,103 ft. to a stake on the line of the tract of land formerly

owned by John M. Hanly; thence northerly with the line of said Hanly to the Ohio river; thence easterly with the river to the beginning; containing two hundred and four acres, more or less, saving and reserving from that part of this tract formerly owned by Wm. P. Holderly, a lot containing four acres and certain rights of way fully described in his deed to Albert Laidley, of record in Cabell county, as a reservation, and also from that part of the tract formerly owned by Jas. H. Poage, four acres, described in the reservation made in his deed to Albert Laidley, also of record in Cabell county.

439 Seventh. All that certain tract of land which is described in a certain deed executed by John M. Pennybacker and Sarah, his wife, to said C. P. Huntington, dated February 25th, 1870, recorded in the recorder's office of said county, March 31st, 1870, in Deed Book B, pages 427 and 428, is bounded and described as follows, to wit:

"All that certain tract or parcel of land situate, lying and being in the county of Cabell and State of West Virginia, on the Ohio river, about three miles below the mouth of the Guyandotte river and bounded as follows, to wit: Beginning at a stake, corner of lot No. 3, in the division of the lands of Isaac Frampton, Jr., on the Ohio river, S. 19¼ E. 377 poles to a stake from which a small sycamore stands, S. 1½ E. two poles and three links N. 70¾ east one pole and 24 links to a stake from which the above sycamore bears, N. 33° W. three poles and 7 links, and another bears 32½ E. 3 poles and 6 links; thence south 13° E. one hundred and twenty poles to two white oaks, S. 30° W. thirty-six po. to a white oak among some rocks on a point, S. 70° W. 50 poles to a black oak and white oak on a point, S. 11½ W. 120 poles to 2 white oaks on a hill, S. 54° E. 62 poles to 2 black oaks, N. 40° E. 150 poles to a chestnut oak near top of ridge, N. 5° W. 180 poles to a white oak and two beeches, N. 21° W. 8 poles to the S. E. corner of the Brown tract; thence N. 19° W. 398 poles to a stake on the Ohio river S. 73 W. 47 poles and 14 links to the beginning; containing 240 acres, be the same more or less; subject, however, to the reservation of one acre of land at the corner of the field where the lane and the turnpike intersect and whereon a grocery storehouse now stands. Beginning at a stake on the side of the turnpike road and *and* the west side of Beuhring's lane on my line; thence with the turnpike, two hundred and ten feet to a stake; thence S. 19 E. 210 feet to a stake; thence east and parallel with turnpike 210 feet to a stake in my line; thence with said line N. 19 W. 210 feet to the beginning; the title of which land is hereby retained and reserved to said S. H. G. Pennybacker, as if this deed was never made." Also, the right to occupy the land for the present year, work the same and apply the crops for his own use, but to allow said Huntington to work on the same for any purpose in building and completing the Chesapeake & Ohio r'road and its appurtenances; being the same 240 acres above referred to in the closing paragraph of the fourth description.

Eighth. All that certain tract of land situate in the county of

Cabell and State aforesaid, which, in a certain deed, executed by said Albert Laidley and Vesta, his wife, to C. P. Huntington, dated December 7, 1870, recorded in the recorder's office December 7th, 1870, in Deed Book C, folio 39, is bounded and described as follows, to wit:

All of that tract of land s'd Albert Laidley bought of Wm. P. Holderby and deeded on the 7th day of October, 1870, and recorded in Deed Book B, page 554, in Cabell county, West Virginia, which was not heretofore deeded by said Laidley to said Huntington, and described as follows: On the east by Wm. P. Holderby, on the south by the C. & O. railroad, as at present located, on the west by lands of s'd Huntington, formerly
440 Poage on the north by said Huntington, formerly Wm. P. Holderby; containing forty acres, more or less.

Ninth. All that certain lot, piece or parcel of land which, in a certain deed executed by William P. Holderby to said C. P. Huntington, dated March 1st, 1871, recorded in said recorder's office, March 6, 1871, in Deed Book C, page 103, is bounded and described as follows, to wit:

"A lot of land situate near the Ohio river, in Cabell county, West Virginia, and containing four acres of land, and including the brick dwelling-house and other buildings of the said party of the first part; the same being the exact parcel that was reserved in a previous grant of about one hundred and twenty-four acres, made to Albert Laidley and described therein as a reservation of four acres, with all the privileges and appurtenances thereof."

Tenth. All that certain tract of land which, in a certain deed, executed by Elisha T. Mitchell and Elizabeth M., his wife, to said C. P. Huntington, dated April 21st, 1871, recorded in the recorder's office of said county on the 21st day of April, 1871, in Deed Book C, page 133, is bounded and described as follows, to wit: "All that certain piece or parcel of land situate in Cabell county, West Virginia, purchased by the party of the first part from Dr. P. H. McCullough and deed for the same executed by T. B. Kline, special commissioner, and bounded as follows: On the north by the Ohio river, on the east, south and west by lands of C. P. Huntington, containing four acres of land, be the same more or less."

Eleventh. All that certain tract of land which, in a certain deed executed by William P. Holderby to said C. P. Huntington, dated July 19, 1871, recorded in the recorder's office of said county, on the 20th day of July, 1871, in Deed Book C, page 173, is bounded and described as follows, to wit: A certain tract or parcel of land, situate, lying and being in the county of Cabell, State of West Virginia, containing twenty-eight and one-half (28½) acres, more or less, and bounded and described as follows: On the easterly side by the lands of Peter C. Buffington and the said C. P. Huntington, on the northerly side by the lands of the State normal school, on the westerly side by the lands of the said C. P. Huntington, and on the southerly side by the lands of the Chesapeake and Ohio Railroad Company, with all and singular the privileges and appurtenances thereunto belonging, together with all rights of re-

version, whether in public roads or otherwise, thereof, reserving, nevertheless, from this grant two parcels of land, one containing one and ninety-two one-hundredths (1.92) acres, described as follows in a deed to C. F. Parsons, and now of record in the county of Cabell, to wit: Beginning at a stone in the east line of the lane running from the college to the State road, and in the centre of Sixth avenue, in the city of Huntington; thence east with the centre of Sixth avenue to a stake in the centre of 17th street, and thence south with the centre of said street and with the east line of said lane so as to include one and ninety-two-hundredths (1.92) acres, by a parallel line with the centre of said Sixth avenue; the other
441 containing one acre, is situated in the southwest corner of the tract herein conveyed and is bounded and described as follows, to wit: Beginning at a point thirty feet northerly of the northerly line of the land of the Chesapeake and Ohio Railroad Company and in the easterly line of the lane running from the college to the State road, running thence N. 14° W. 210 feet to the southerly line of 7th avenue, in the city or town of Huntington; thence, along this line, N. 76° E. 207.43 feet to a stake twenty feet east of the westerly line of 17th street; thence parallel with the said line of 17th street S. 14° E. 210 feet to a stake thirty feet northerly of the northerly line of the land of the Chesapeake and Ohio Railroad Company; thence parallel with the line of said railroad company S. 76° W. 207.43 feet to the place of beginning; it being intended by this grant to convey to the said party of the second part the entire residue of the farm on which the said party of the first part formerly resided, with all the rights and privileges that have hitherto remained vested in said Holderby, except the above reservations.

Twelfth. All that certain tract of land which, in a certain deed executed by E. S. Holderby and C. A. Holderby, his wife to said C. P. Huntington, dated the first day of September, 1871, recorded in the recorder's office of said county on the 5th day of September, 1871, in Deed Book C, page 186, is bounded and described as follows, to wit: Beginning at a stake, corner to James H. Poage, standing 50 feet from the center line of the Chesapeake and Ohio railroad; thence N. 76 E. and parallel with said road 1,928 feet to corner of Huntington's land; thence with his line S. 5° 45 E. 1,500 feet to corner of Huntington; thence S. 76 W. and parallel with the railroad 1,560½ feet to James H. Poage's line; thence with Poage's line N. 17° 35′ W. $1{,}490\frac{6}{10}$ feet to the beginning; excepting and reserving, however, out of the above boundary 16 acres sold and conveyed to C. F. Parsons, and also three and $(\frac{21}{100})$ twenty-one-hundredths acres sold and conveyed to Joseph and Foster Stewarts and Wm. Pennybacker, leaving, after reserving as above, 40.37 acres, be the same more or less.

Thirteenth. All that certain tract of land which, in a certain deed executed by J. Harvey Poage and Sarah A., his wife, to C. P. Huntington, dated the 11th day of October, 1871, recorded in the recorder's office of said county on the 12th day of October, 1871, in Deed Book C, page 216, is bounded and described as follows, to wit:

Beginning at a stake on the line of the Poage and Hanly farms, being the southwest corner of the land that the said Poage and wife conveyed to A. Laidley; thence N. 76 E., parallel with the Chesapeake and Ohio railroad, (1,111) eleven hundred and eleven feet to the northwest corner of land E. S. Holderby conveyed to Huntington; thence S. 18° 53′ E. (772.8) seven hundred and seventy-two and eight-tenths feet to a stake on the south line of *of* Ninth avenue; thence with said south line of Ninth avenue S. 76 W. (1,108) eleven hundred and eight feet to what was formerly the Hanly line; thence with said Hanly line N. 19° 6′ W. (773.06) seven hundred and seventy-three and six-hundredths feet to the beginning; containing nineteen and sixty one-hundredths acres.

442 Also all those certain tracts, pieces or parcels of land situate, lying and being in the county of Kanawha and State of West Virginia.

First. All that certain tract of land lying and being in the township of Cabin Creek, in the county and State aforesaid, containing thirty-six and two-thirds acres and bounded as follows: Beginning where once stood two box elders on the bank of the Kanawha river, upper corner to a survey of 400 acres, made for and patented to Andrew Donnelly and now claimed as the corner between the lands of the Kanawha & Ohio Coal Co., and the land herein granted, and running thence with the line between said lands, the original call of said survey being S. 30 E. 20 poles to a beech at the foot of the hill; thence with the next line of said survey (the call being S. 60 W. 50 poles to a beech and sugar tree); thence with the lines of same until the- intersect the line of lands belonging to Henry L. Creary, and with his line to Cabin creek; thence down Cabin creek with its meanders and binding thereon to the Kanawha river; thence up said river with its meanders and binding thereon to the place of beginning; being the same premises which were conveyed to the said C. P. Huntington by John McConihay by deed dated March 31, 1870, recorded in the recorder's office of said Kanawha county April 1st, 1870, in Deed Book No. 26, page 274.

Second. All the following property, to wit: A tract of land lying on the south side of Kanawha river, adjoining the lands of William Bradford on the lower side, and the lands of John McConahay on the upper side, and known as the Burke and Lewis or "Burke place;" containing by survey 149 acres, 2 roods and 14 perches of bottom land and 68 acres of hillside; being the same land assigned to the devisees of Col. William Dickinson in the division of the bottom lands of the late firm of Dickinson & Shrewsberry, as will appear by the reports of Commissioners John L. Cole, M. P. Wyatt and Joel Ruffner, of record in the recorder's office of Kanawha county, and also filed with the chancery suit of Dickinson *versus* Shrewsberry, in the circuit court of Kanawha county. The same lands were subsequently assigned and allotted to H. C. Dickinson and his wife in the division of the lands belonging to the devisees of Col. William Dickinson, as will appear by a deed of record between said devisees, the metes and bounds of which lands are

as follows: Beginning at an elm, one live and one dead sycamore, near the river's edge, immediately above the mouth of a drain, corner to said land and the land now owned by William Bradford, and running thence S. 5½ W. 39 poles to a stake on the upper bank of said drain; thence S. 45½ W., crossing the drain at 5 poles, 8½ links, and the fence at the road at 13 poles, in all 29 poles, to a stone on the hillside, with a young sycamore and 4 buckeyes as pointers; thence S. 48½ E., crossing Wilmot's branch at 186 poles, in all 208 poles, to a stone on a hillside, corner to Lewis and Burke tracts; thence S. 37½ E., crossing a drain at 168, in all 288 poles, to a stone marked "D. S.," also, a buckeye, ash and birch, a double poplar, a dogwood and ironwood, marked as pointers, corner to John McConahay's land; thence with his line N. 51° E., crossing N. E.
443 side of road and stone pile at 55 poles, in all 112 poles, to a locust on the Kanawha River bank in a fence row; thence leaving the said McConahay's line and running down the river and binding thereon at low-water mark to the beginning corner.

Also, three lots, being parts of an island in Kanawha river, known as Witcher's Creek island; the said three lots being numbered 2, 6 and 7, in the partition of the real estate of Henry Hannan, dec'd, which contain together 2 acres, 1 rood and 19 perches, and were assigned by metes and bounds to the devisees of Col. William Dickinson in the before-mentioned partition of the bottom lands of Dickinson and Shrewsberry, and subsequently assigned to the grantors in this deed, in the partition of the lands of Col. William Dickinson, to which reference is hereby had for a fuller description thereof.

Also a tract of land near to and separated from the before-mentioned "Burke place" by a small tract of land known as McConahay's Hannan lot, which land so sold is known as Dickinson & Shrewsberry's "Hannan lot;" was sold by the heirs of Henry Hannan to Samuel Burke, and by him to Dickinson & Shrewsberry, and in the before-mentioned partition of the bottom lands of Dickinson & Shrewsberry, was assigned to the devisees, Joel Shrewsberry, and in the partition of the lands of Joel Shrewsberry subsequently among his devisees, was allotted and assigned to Mrs. Caroline Quarrier. The same land was, to wit, on the — day of ——, 186–, conveyed and transferred to Samuel A. Miller, as trustee for his wife, Helen Q. Miller, and has been by deed of this date conveyed and sold by said Miller, trustee, and the same Miller and wife to the said H. C. Dickinson, all of which will appear by the said several deeds of record in Kanawha county; which said lands containing 24 acres of bottom and 15 acres of hill land, *is* more particularly described as follows: Beginning at a stone marked "D. S.," near the upper corner of a newly enclosed field, original corner in the division of the Hannan lands, and running N. 51° 20′, crossing Field's creek at 58 poles; passing a- apple tree marke- "I" an- "=," on the other side at 86 poles and 20 links, crossing the creek again at from 102 to 106 poles, in all 112 poles, to a hickory on top of the bank, original corner in the division between lots No. 6 and 7; thence down the river with its meanders and binding thereon at low-water mark to a stake

at the end of a fence row, corner to said lot and John McConahay's Hannan lot; thence with the line between said lots and the fence, S. 51° 25′ W., crossing the county road at 68 poles, in all 118 poles, to a stone marked "$\frac{D.}{M}$ S." on the back line of the Preston survey; thence with the same S. 37½ E. 59 poles to the beginning.

Also, another tract of land back of and adjoining the "Burke" or "Burke & Lewis place," containing by survey 377⅜ acres, the same being the interest of the devisees of Col. William Dickinson and Joel Shrewsberry in a tract of mountain land containing 1,700 acres, lately owned by John McConihay, Grant's heirs, Herrick Dickinson and Shrewsberry, and the children of Mrs. Amelia Bradford, which said interest so owned by the devisees of Dick-
444 inson and Shrewsberry at this time is more particularly described and set out in the proceedings of a chancery suit lately pending in the circuit court of Kanawha county for the division and partition thereof, in the name of Dickinson and Shrewsberry *vs.* John McConahay and others, to which reference is hereby had for a full and minute description hereof; being the same premises which were conveyed to said C. P. Huntington by Henry C. Dickinson and Sally J., his wife, by deed dated June 23, 1870, recorded in the recorder's office of said Kanawha county, June 25, 1870, in Deed Book No. 27½, page 57, and subject to the reservations and covenants contained in said deed.

Third. All that certain tract of land, containing one hundred and seventy-one acres, more or less, situate in said Kanawha county, known as the Cottage farm, and generally described as follows: Commencing at a sycamore tree on the bank of Coal river, corner to George Washington survey and to farm of J. F. Hansford; thence with said Hansford's line to a stake on the bank of the Kanawha river; thence down said river and binding thereon to stake, corner of J. S. Cunningham; thence with said Cunningham's line to stake in said line and corner to Jos. S. Simms; and thence with said Simms' line to stake in said line and corner to J. S. Cunningham; and thence with said Cunningham's line to Coal river, corner of said Cunningham; and thence up said river and binding on the same to the place of beginning; being the same premises which were conveyed to the said C. P. Huntington by Mrs. Elizabeth H. Thompson by deed dated July 26th, 1870, recorded in the recorder's office of said Kanawha county, August 17th, 1870, in Deed Book No. 27½, page 78.

Fourth. All that certain piece of land situate in St. Albans, in said county and State, bounded and described as follows, viz: Beginning at a stone on the upper side of James river and Kanawha turnpike, leading from St. Albans to Charleston, it being a corner to Mrs. Helen M. Cunningham's land, thence with a line thereof (1) S. 0° 30′ W. 80 poles to a stone, another corner to the same; (2) thence S. 60° 45′ E. 84$\frac{2}{5}$ poles to a stone, corner to Joseph Y. Simms' and in line with C. P. Huntington's (formerly Mrs. Elizabeth H. Thompson's) land; (3) thence with a line of the last named S. 8° 30′ E. 122½ poles to a cross and hole marked with a hatchet on a rock on the edge of Coal river; thence down the

river and binding thereon at low water, the following courses and distances, viz: (4) N. 43 W. 28 poles; (5) N. 49° 30′ W. 18 poles; (6) N. 60° W. 27 poles; (7) N. 58° 30′ W. 130 poles, passing the upper end of lock No. 1 at 42 poles, passing the lower end of same at 55 poles, to a stake near a sycamore tree; (8) N. 65° W. 20 poles; (9) N. 22° W. 23½ poles; (10) N. 5° 45′ W. 30 poles; (11) north, 24 poles; (12) N. 4° 30′ W. 50 poles to a stake, thence leaving Coal river and running back to the town lots of I. Lasley and others; (13) S. 87½ E. 27$\frac{4}{6}$ poles to a stake; (14) N. 1½° E. 11 poles to a stake; (15) S. 87½ E. 11$\frac{4}{10}$ poles to a stake; (16) N. 1½° E. 9 poles with the garden fence of Mrs. Mary Hudson to the James river and Kanawha turnpike; (17) thence with said turnpike S. 87½ E.
445 9$\frac{1}{10}$ poles to a stake; (18) thence north 152$\frac{3}{25}$ poles to a stone on the south side of Kanawha river at low-water mark; (19) thence up said river with its meanders and binding thereon the following courses and distances, viz: S. 57 E. 40$\frac{2}{25}$ poles to a stake; (20) S. 61° E. 30 poles to a stake; (21) S. 67° E. 40 poles; (22) S. 71$\frac{3}{4}$ E. 19$\frac{3}{5}$ poles to a maple, corner to the land of C. P. Huntington (formerly Mrs. E. H. Thompson); (23) thence leaving the river and with a line thereof S. 0° 30′ W. 131 poles to a stake, corner to J. T. Simms' one-acre lot below the turnpike; (24) thence with a line of the same N. 89° 10′ W. 11$\frac{3}{25}$ poles to another corner of same; (25) thence with another line of same 0° 50′ W. 17½ poles, passing through Simms' barn about the center, and crossing the James river and Kanawha turnpike to the upper side thereof to a line of said J. T. Simms' 19-acre lot; (26) with a line of said lot and with a line of Mrs. H. M. Cunningham's land N. 60° 45′ W. 47$\frac{7}{25}$ poles to the beginning; containing 258$\frac{3}{8}$ acres of land, a plot whereof is annexed to a deed made by John S. Cunningham and Helen M., his wife, to said C. P. Huntington, dated May 9th, 1871, recorded with the said plot in the recorder's office of said Kanawha county, May 16, 1871, in vol. 27½, page 125, &c; being the same premises conveyed by said deed, and subject to the reservations therein contained, and noted on said plot.

And also all contracts or title bonds for the sales of lands in the county of Cabell, West Virginia, which have been heretofore assigned to the said C. P. Huntington and the deeds of which have not yet been given.

[$600 revenue stamps, canceled.]
[United States internal-revenue $200.00 stamp.]
[United States internal-revenue $200.00 stamp.]
[United States internal-revenue $200.00 stamp.]

Together with all and singular the tenements, hereditaments and appurtenances to the said several tracts or parcels of land belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever, as well *as* in law as in equity, of the said parties of the first part, of, in or to the above-described premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above

mentioned and described premises, together with the appurtenances, unto the said party of the second part, its heirs, successors and assigns, forever. And the said C. P. Huntington doth hereby covenant with the party of the second part that he will warrant specially the property hereby conveyed.

Witness the following signatures and seals:

C. P. HUNTINGTON. [SEAL.]
E. S. HUNTINGTON. [SEAL.]

Sealed and delivered in the presence of—

JAS. H. STORRS.
CHARLES NETTLETON.

446 STATE OF NEW YORK, *City, County, and State of New York,* } *To wit, ss:*

I, Charles Nettleton, a commissioner appointed by the governor of the State of West Virginia for the State of New York, do certify that Collis P. Huntington, whose name is signed to the foregoing instrument, bearing date on the sixteenth day of October, A. D. one thousand eight hundred and seventy-one, has acknowledged the same before me in my State aforesaid.

Given under my hand and official seal this 16th day of October, A. D. 1870.

CHARLES NETTLETON,
[SEAL.] *Commissioner for West Virginia in New York,* 117 *Broadway, New York City.*

STATE OF NEW YORK, *City and County of New York,* } *To wit, ss:*

I, Charles Nettleton, a commissioner appointed by the governor of the State of West Virginia for the State of New York, do certify that Elizabeth S. Huntington, the wife of Collis P. Huntington, whose name is signed to the foregoing instrument, bearing date on the sixteenth day of October, A. D. one thousand eight hundred and seventy-one, personally appeared before me in the county and State aforesaid, and, being examined by me privately and apart from her husband and having the instrument aforesaid fully explained to her, she acknowledged the said instrument to be her act and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand and official seal this 16th day of October, A. D. 1871.

{ Seal Charles Nettleton, Commissioner for West Virginia in New York. }

CHARLES NETTLETON,
Commissioner for West Virginia in New York,
117 *Broadway, New York City.*

RECORDER'S OFFICE, CABELL COUNTY,
WEST VIRGINIA, *December 6th*, 1871.

This deed from Collis P. Huntington and wife to the Central Land Company of West Virginia, with United States revenue stamps thereon for six hundred ($600) dollars, was this day presented in said office and, together with the certificates thereon endorsed, admitted to record.

Teste: T. J. HAYSLIP, *Recorder*,
By THOS. J. F. HAYSLIP, *Dept.*

5. The report of Surveyor James L. Thornburg and the plat accompanying the same made to this court in these consolidated actions in the words and figures following, to wit:

447 To the honorable judge of the circuit court of Cabell — :

JOHN B. LAIDLEY, Pl'ff,
—
THE CENTRAL LAND CO. OF WEST VA.

JOHN B. LAIDLEY, Pl'ff,
vs.
THE CENTRAL LAND COMP., Def't. } In Ejectment.

In obedience to the annexed order, made by the circuit court of Summers county, West Virginia, on the 6th day of May, 1889, in the above-entitled causes, the undersigned, surveyor of lands of Cabell county, proceeded to make the survey of the land in the bill mentioned, as directed by the plaintiff, and first to locate the lines of the entire tract.

Beginning at the north end of the upper line on the Ohio river, thence S. 16° 26′ E., crossing the south line of Second avenue nine feet west of the southwest corner of Second Ave. and Seventh street, and from this point measuring 6,376 feet, crossing the Chesapeake and Ohio railroad and Four-pole creek, to a stake; thence S. 2° 18′ E., passing through a large white-oak line tree standing on or near the top of the river hill, at 986 feet, and continuing the same course for 2,368 feet, making in all 3,354 feet, to a stone, from which an 18-inch chestnut oak marked as a side line bears N. 2½ W. 22 feet — the stone sets where the chestnut-oak corner tree stood; thence with the old Beuhring line S. 49° 42′ W. 2,439 feet to a stake; thence, leaving the Beuhring line, N. 52° 30′ W. 636½ feet to a white oak, N. 13° 35′ E. 1,929 feet to a black oak and white oak, N. 72° 15′ E. 835 feet to a white oak, N. 32° 56′ E. 900 feet to where two white oaks stood, N. 10° 20′ W. 1,937 feet to a stake in the creek bottom, S. 73° 25′ W. 32.34 feet to a stake; thence N. 16° 35′ W., crossing Four-pole creek and the railroad, and at 5,962 feet crossing the south line of Second avenue 124½ feet easterly from the southe-st corner of Fifth street and Second avenue, and continuing thence the same course to the Ohio river; thence up the river N. 75° 40′ E. 784¾ feet to the beginning.

At the request of plaintiff I show on the plot herewith the land

designated as lot No. 1, being all the tract lying south of the railroad, containing 188½ acres and described as follows: Beginning at a point on the upper line 60 feet from the center line of the Chesapeake and Ohio railway, thence with the upper line S. 16° 26′ E. 3,665½ feet, S. 2° 18′ E. 3,354 feet to a stone where a chestnut oak stood, S. 49° 42′ W. 2,439 feet, N. 52° 30′ W. 636½ feet to a white oak, W. 13° 35′ E. 1,929 feet to a bl'k oak and white oak, N. 72° 15′ E. 835 feet to a white oak, N. 32° 56′ E. 900 feet to where 2 white oaks stood, N. 10° 20′ W. 1,937 feet to a stake in the creek bottom, S. 73° 25′ W. 32.34 feet to a stake, N. 16° 35′ W., crossing Four-pole creek and continuing 3,242 feet to a point on the lower line 60 feet from the center line of said railway; thence parallel with said center line N. 78° 22′ E. 779½ feet to the beginning.

448 Lot No. 2 beginning at a point on the upper line 90 feet from the center line of the Chesapeake and Ohio railway on the north side thereof, thence N. 16° 26′ W. with the upper line 2,649½ feet to the north side of Second avenue, being the line of the C. & O. Railway property; thence S. 78° 22′ W. 484$\frac{3}{10}$ feet to a point in the west line of Sixth street; thence N. 11° 38′ W. with the west line of Sixth street extending northerly 42 feet; thence S. 78° 22′ W. 306$\frac{7}{100}$ feet to the lower line of the entire tract; thence with the same S. 16° 35′ E. 2,691½ feet to a point 90 feet from the center line of the C. & O. railway on the north side; thence parallel with said center line N. 78° 22′ E. 779$\frac{9}{10}$ feet to the beginning, containing in all 47¾ acres; but the plaintiff directed me to exclude from this lot No. 2 the following parcels, viz: (1st) An acre lot conveyed by S. H. G. Pennybacker to W. J. Parsons. This lot is shaded red on the plats, bounded as follows: Beginning at a point on the upper line of the entire tract about 14 feet south of the south line of Fifth avenue, thence S. 69¾ W. with the old turnpike 210 feet, S. 16° 26′ E. 210 feet, N. 69¾ E. 210 feet to the upper line & with it N. 16° 26′ W. 210 feet to the beginning, and the lot enclosed and occupied by M. E. Roffe—that part of which is outside of said acre lot bounded as follows: Beginning at the intersection of the south line of the old turnpike with the west line of Seventh street, thence with the west line of Seventh street N. 11° 38′ W. 30 feet to the southwest corner of Fifth avenue and Seventh street; thence S. 78° 22′ W. with the south line of Fifth avenue 120 feet to a point; thence S. 11° 38′ E. 200 feet; thence N. 78° 22′ E. 31½ feet to the west line of the Parsons acre lot and with it N. 16° 26′ W. 155 feet; thence with the line of the old turnpike and the north line of s'd acre lot N. 69¾ E. to the beginning, containing $\frac{19}{100}$ acre, "shaded blue on plots."

(2d.) The following lots on Third avenue, to wit: Block No. 68, lots No. 4 to 14, both inclusive, and in block 67, lots 15 and 16 & 18; also the following lots on Second avenue, in block 67, number 1, 4, 8, 9, 10, and 11.

There is in the boundary designed on the accompanying plot as lot No. 2 (out of which certain parcels are to be excluded)... .... 47.75 acres.

To be excluded:

The W. J. Parsons lot.....	1.00	acre.
" M. E. Roffe parcel.....	0.19	"
14 lots on 3d avenue.....	1.50	"
6 lots " 2nd avenue.....	0.58	
Total am't to be deducted.....	3.27	

No. of acres after deducting the several parcels..... 44.48 acres.

The third requirement made by the plaintiff, viz., to give metes, bounds, and No. of acres of land between the Ohio river and the Chesapeake & Ohio railway. I find that said railway company has a deed to all the land north of the railroad track next to the river.

449

Fourth. The metes and bounds and acres of the railway property between 7th and 8th avenues on said land is as follows:

Beginning on the upper line of the tract, at a point 90 feet from the center line of the railroad, thence S. 16° 26′ E. 150½ feet; thence S. 78° 22′ W., parallel with the center line, 779½ feet to the lower line of the tract; thence with the same N. 16° 35′ W. 150½ feet to a point 90 feet at right angles from the center line of the railroad; thence N. 78° 22′ E. 779.9 feet to the beginning, containing 2.68 acres & designated as lot No. 4 and shaded yellow on the plat.

The metes and bounds of the railway at the north end of the tract is as follows:

Beginning where the east or upper line of the entire tract of land crosses the north side of Second avenue, thence with the north side of Second avenue S. 78° 22′ W. 484.3 feet to a point in line with the west line of Sixth street; thence N. 11° 38′ W. 42 feet; thence S. 78° 22′ W. 306.07 feet to the west line of the entire tract and with it N. 16° 35′ as far into the Ohio river as said land extends; thence up the said river to the upper line and with the upper line S. 15° 26′ E. to the beginning, the quantity indeterminate; lot No. 5 shaded yellow on plot. At the request of defendant I have ascertained where the upper and lower lines cross the lines of the avenues and report the same as follows:

The lower or west line crosses the—

South	line of	13th	Ave.	98.45	feet	east of	6 street.
North	line of	13th	Ave.	91.52	"	"	east line of 6th street.
South	"	12th	Ave.	55.13	"		
North	"	12th	"	48.20	"		
South	"	11th	"	11.80	"		
North	"	11th	"	4.87	"		
South	"	10th	"	31.52	"	west of	east line of 6th street.
North	"	10th	"	38.45	"	"	" "
South	"	9th	"	5.16	"	east of	west line of "
North	"	9th	"	1.77	west of	west	" "
South	"	8th	"	38.16	"		" "
North	"	8th	"	45.09	"		" "
South	"	7th	"	91.88	"		" "
North	"	"	"	98.81	"		" "
South	"	6th	"	135.20	"		" "
North	"	"	"	142.13	"		" "
South	"	5th	"	178.53	"		" "
North	"	"	"	187.19	"		" "
South	"	4th	"	223.59	"		" "
North	"	"	"	230.52	"		" "
South	"	3rd	"	259.98	"		" "
North	"	3	"	268.64	"		" "
South	"	2d	"	295.50	"		" "
North	"	2	"	306.07	"		" "

The upper or east line crosses the—

South	line of	13th	Ave.	48.95	feet	west of	west line of 8th street.
North	"	13th	Ave.	55.68.			
South	"	12th	"	91.00.			
North	"	"	"	97.73.			
South	"	11th	"	133.05.			
North	"	"	"	139.78.			
South	line of	10th	Ave.	175.10.			
North	"	"	"	181.83.			
South	"	9th	"	217.16.			
North	"	9th	"	223.89.			
South	"	8th	"	160.79	ft. east	of the	east line of 7th St.
North	"	"	"	154.06	"	"	" "
South	"	7th	"	108.65	"		
North	"	7th	"	101.92	"		
South	"	6th	"	66.60	"		
North	"	"	"	59.87.			
South	"	5th	"	24.54.			
North	"	"	"	16.13.			
South	"	4th	"	19.20	" west	of	east line of 7th street.
North	"	"	"	25.93	"	"	" "
South	"	3rd	"	25.48	east	of	west line of 7th street.
North	"	"	"	17.07	"	"	" "
South	"	2d	"	9.00	west	"	" 7th street.
North	"	2	"	15.73	"	"	" "

All of which is respectfully submitted.

J. L. THORNBURG,
Surveyor of Lands, Cabell County, W. Va.

April 8th, 1890.

" Filed April the 8th, 1890.

T. W. PEYTON, *Clerk.*"

(Here follows map marked p. 451.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

6. An agreement made between the plaintiff, John B. Laidley, and the defendant, The Central Land Company of West Virginia, on the 5th day of September, 1888, in these consolidated actions while pending in the circuit court of Summers county and entered upon the law order book of said court; which agreement is in the words and figures following, to wit:

WEST VIRGINIA:

In Summers County Circuit Court.

SEPTEMBER 5TH, 1888.

J. B. LAIDLEY, Pl'ff,
vs.
THE CENTRAL LAND CO. OF WEST VA., Def't, } In Ejectment.

&

J. B. LAIDLEY, Pl'ff,
vs.
SAME. } In Ejectment. Consolidated.

This day came the parties, by their attorneys, and the defendant, by its attorneys; and thereupon the defendant moved the court for a stay of proceedings in these causes until the decision of the supreme court on the appeal hereinafter mentioned, upon the ground that there is pending in the supreme court of appeals of this State an appeal by the defendant from a decree of this court in the chancery cause
452 of the Central Land Company of West Virginia against said J. B. Laidley and others, and read in evidence in support of said motion the record of said chancery suit and the appeal therein, and the plaintiff resisted said motion and insisted upon a trial of said action of ejectment; and the court, having fully considered the matters arising upon said motion, doth decide to stay said actions until the decision of the appellate court in said chancery cause, upon condition, and not otherwise, that said defendant, The Central Land Company of West Va., agrees here in open court that judgment be at once entered for the plaintiff in said actions of ejectment for the estate in fee-simple in the lands in the dec-arations in said actions described, without further defence, in the event the decree aforesaid in said chancery suit be affirmed upon said appeal so far as it relates to the title in the land, but judgment so to be entered to be without prejudice to the right of the defendant, of any it has, to compensation for any improvements it may have placed upon the lands in controversy; and thereupon the said defendant in open court accepted said stay of proceedings in said actions of ejectment upon the terms aforesaid.

A true copy from the record.

Teste: B. L. HOGE, *Clerk.*

The defendant objected to the introduction and reading of said order; which objection was overruled by the court and the defendant again excepted.

7. The record of the chancery cause of The Central Land Company of West Virginia *vs.* John B. Laidley *et als.*, lately pending in the circuit court of Summers county, and being the record of the same cause referred to in said agreement as standing at the time of said agreement on appeal in the supreme court of appeals; which record is in the words and figures following, to wit:

(NOTE BY CLERK)—This record here referred to is not copied by direction of defendant's attorney.

8th. The mandate of the supreme court of appeals affirming on appeal the decree of the circuit court of Summers county entered in said chancery cause of The Central Land Company of West Virginia *vs.* John B. Laidley *et als.*; which mandate is in the words and figures following, to wit:

453 WEST VIRGINIA, *To wit:*

At a supreme court of appeals held at Charleston, in Kanawha county, on the 11th day of February, 1889.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA, Plaintiffs Below, Appellants,
vs.
JOHN B. LAIDLEY and Others, Defendants Below, Appellees.

Upon an appeal from and supersedeas to a decree of the circuit court of Summers county, rendered on the 14th day of May, 1888, erroneously described in the petition and former orders as of the 9th day of May, 1888.

The court, having maturely considered the transcript of the record of the decree aforesaid and the arguments of counsel thereon, is of opinion, for reasons stated in writing and filed with the record, that there is no error in said decree.

It is therefore adjudged, ordered, and decreed that the decree of the circuit court of Summers county, rendered in this cause on the 14th day of May, 1888, be, and the same is hereby, affirmed, and that the appellant do pay to the appellees thirty dollars' damages and their costs about their defence in this court in this behalf expended; which is ordered to be certified to the circuit court of Summers county.

A copy from the record.

Attest: O. S. LONG, *Cl'k.*

Thereupon the plaintiff, further to maintain the issue upon his part, proved the following facts, to wit:

(*a.*) That Sarah H. G. Owings and John M. Pennybacker were married to each other in Howard county, Maryland, on the 28th day of June, 1860, and immediately removed to Virginia, now West Virginia, where they lived together as husband and wife from the time of said removal down to the 5th day of July, 1881.

(*b.*) That the said John M. Pennybacker died on the 5th day of July, 1881.

(*c.*) That Charles T. Everett, the husband of Rebecca J. Everett, died in the fall of 1862 or the spring of 1863, and that the said Rebecca J. Everett, at the time of the execution of her deed to Sarah H. G. Pennybacker, on the 18th day of August, 1865, and therein-before set out, was a *feme sole* and the widow of the said Charles Everett, deceased.

(*d.*) That J. L. Thornburg, in making said survey, found the natural corners, and that his survey and report were accurate.

And the said defendant, to maintain the issue upon its part joined, introduced and read in evidence to the jury the following deeds and other writings, to wit:

(1.) A deed from James H. Brown and others to Albert Laidley, dated the 29th day of December, 1848, and the certificates of
454 acknowledgments and recordation thereon endorsed, in words and figures following, to wit:

This indenture made and entered into this 29th day of December, in the year one thousand eight hundred and forty-eight between James H. Brown and Louisa, his wife, Robert Osburn and Josephine, his wife, and Ceres Brown, parties of the first part, and Albert Laidley of the second part,

Witnesseth, that the said parties of the first part for and in consideration of the sum of six thousand, four hundred dollars, to them in hand paid by the said Albert Laidley the receipt whereof is hereby acknowledged, they have given, granted, bargained and sold and by these presents, do give, grant, bargain and sell unto the said Albert Laidley, his heirs and assigns forever, two certain tracts or parcels of land, situated, lying and being in Cabell county, on the Ohio river and the adjoining hill; that is to say two hundred acres being the west half of lot No. 37 in the Savage grant, which was assigned to James Samuel being the same land which George N. Brown conveyed to Richard and Benjamin Brown by deed recorded in the office of Cabell county court and which Richard Brown conveyed to the said Benjamin Brown in his lifetime and is the same upon which the s'd Benjamin Brown lived and died in actual occupation of. Also a tract of land situate and a-joining the above on the south side thereof, being the residue, not heretofore sold and conveyed, of a tract of land which Benjamin Brown purchased of Summers and Bostick, as agents of James T. Watson, containing about — acres. Also all the right, title and interest of the said parties of the first part in and to a certain tract or parcel of land, situate and lying on Four-pole creek in the county afsd., between the two tracts of land hereinabove mentioned and conveyed by them, the said parties of the first —, inherited from the said Benjamin Brown, dec'd, and which said tract contains by estimation — acres, and was patented to P. Scales, Noah Scales, Wm. Buffington and Henry Brown by patent bearing date Jan'y 10th, 1810; to have and to hold the above-described two tracts of land with all and singular its appurtenances unto the said Albert Laidley, his heirs and

assigns forever, it being the intention of the contracting parties, to sell and convey by the parties of the first part unto the said Albert Laidley all the right, title, interest and estate which they the said parties of the first part inherited as the heirs-at-law of Benjamin Brown dec'd, in and to the moi-ty of lot No. 37 in the Savage grant and the hill land adjoining thereto, whether purchased of James T. Watson singly or together with Richard Brown or which the said Benjamin Brown held in his lifetime by patent or otherwise, be it more or less, and the said parties of the first part for themselves and their heirs do covenant and — to and with the said Albert Laidley, that they the said parties of the first part will warrant and forever defend the right to the above-described tracts of land, free from the claim or claims, or either of them, as well from all persons claiming from, thro' or under them or either of them.

455 In testimony whereof they have hereunto set their hands and seals the day and year first above written.

JAMES H. BROWN. [SEAL.]
LOUISA M. BROWN. [SEAL.]
ROBERT OSBORN. [SEAL.]
JOSEPHINE OSBORN. [SEAL.]
CERES BROWN. [SEAL.]

CABELL COUNTY, *sc:*

We, Wm. Buffington and Fred'k G. L. Beuhring, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that James H. Brown and Ceres Brown, parties to a certain deed bearing date on the 29th of December, 1848, and hereunto annexed, personally appeared before us in our county aforesaid and acknowledged the same to be their act and deed, and desired us to certify the said acknowledgement to the clerk of the county court of Cabell county, in order that the said deed may be recorded.

Given under our hands and seals this 1st day of January, 1849.

WM. BUFFINGTON. [SEAL.]
FRED'K G. L. BEUHRING. [SEAL.]

CABELL COUNTY, *ss:*

We, William Buffington and Fred'k G. L. Beuhring, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that Louisa Brown, the wife of James H. Brown, parties to a certain deed bearing date on the 29th day of December, 1848, and hereunto annexed, personally appeared before us in our county aforesaid, and, being examined by us privily and apart from her husband and having the deed aforesaid fully explained to her, she, the said Louisa, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same; that she wished not to retract it. Given under our hands and seals this 1st day of January, 1849.

WM. BUFFINGTON. [SEAL.]
FRED'K G. L. BEUHRING. [SEAL.]

MASON COUNTY, *sc:*

We, Robert Mitchell and Michael Kouns, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that Robert Osborn, party to a certain deed bearing date on the 29th day of December, 1848, and hereunto annexed, personally appeared before us in our county aforesaid and acknowledged the same to be his act and deed, and desires us to certify the said acknowledgement to the clerk of the county court of Cabell county, in order that said deed may be recorded.

Given under our hands and seals this 8th day of January, 1849.

R. MITCHELL, *J. P.* [SEAL.]
MICHAEL KOUNS, *J. P.* [SEAL.]

456 MASON COUNTY, *sc:*

We, Robert Mitchell and Michael Kouns, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that Joseph Osborn, the wife of Robert Osborn, parties to a deed be-ring date on the 29th day of December, 1848, and hereunto annexed, personally appeared before us in our county aforesaid, and, being examined by us privily and apart from her husband and having the deed aforesaid fully explained to her, she, the s'd Josephine, acknowledged the same to be her act and deed, and declared that she had willing- signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this eighth day of *December*, 1849.

R. MITCHELL, *J. P.* [SEAL.]
MICHAEL KOUNS, *J. P.* [SEAL.]

CABELL COUNTY COURT CLERK'S OFFICE, *Feb'y* 16, 1849.

The foregoing deed, with the certificates annexed, was this day presented to me, the clerk of Cabell county court, for record.

The same is admitted thereto.

Teste: JOHN SAMUELS, *Cl'k C. C.*

(2.) A deed from Albert Laidley and wife to C. P. Huntington dated the 13th day of April, 1870, together with the certificates of acknowledgement and recordation thereon endorsed, in words and figures following, to wit:

This deed, made the 13th day of April, in the year 1870, between Albert Laidley and Vesta, his wife, of the first part, and C. P. Huntington, of the second part,

Witnesseth, that in consideration of the sum of thirty-six thousand, six hundred and seventy-three $\frac{50}{100}$ dollars, the receipt of which is hereby acknowledged, the said party of the first part doth grant unto the said party of the second part all of two certain tracts or parcels of land lying in the county of Cabell, State of West Virginia, and in the township of Guyandotte, bounded and described as follows, to wit:

One tract containing two hundred and ninety-nine —, bounded and described as follows: Beginning at a stake, northeast corner of S. W. Johnston's land, and running with the upper line thereof S. 20¾° E. 308 p. to a stake; thence N. 80° W. 3 poles and 18 links to a stone, thence S. 75′ W. 115 poles to a stone near a sycamore tree, southwest corner of S. W. Johnston's land; the- S. 21° E. 112 po. to a stake on Watson's line at a dogwood, thence with said Watson's line S. 68 W. 60 po. to the dogwood corner; thence S. 21° W. 36 poles to two wht. oaks, beeches and sugar tree; S. 10° W. 114 poles to three wht. — on a ridge, S. 65 E. 48 poles to two wht. oak-, N. 84° E. 46 poles to wht. oak and locust stump, N. 49 E. 160 poles to a black oak and chestnut oak, S. 88° W. 110 po. to a stake, from which a black walnut — N. 21½ E. 2 p. and 7 links and an apple tree S. 29½ W. 4 po. stands; north 29 E. 186 p. to a chestnut oak on
457 a hillside, N. 33° E. 61 po. to two double willows, N. 20 W. 186 poles to a stone S. 70 W. 25 poles, 15 links to a stone, N. 20 W. 25 poles to a stone near the turnpike, N. 70° E. 25 poles and 15 links to a stone N. 20 W. 121 p. to a stake on the Ohio river, S. 70 W. 53 p. and 16 links to the beginning; it being the same which was conveyed to me on the 22nd day of March, 1870, by deed of John L. Johnston and Mary Jane, his wife, and William L. Johnston and Susan, his wife, by deed recorded in Deed Book B, page 427, of Cabell county.

One tract containing one hundred and ten acres situate in Cabell county and bounded on the southe-st by F. D. Beuhring on the east by E. M. Frampton, and on the north by the lands formerly of Wm. L and J. L. Johnston and hereinbefore described and parcel of a certain tract of 800 acres of the s'd Laidley, fully described in a deed of O. A. and E. McGinnis, recorded in Deed Book J, page 441, of Cabell county, which is to be laid off by the party of the second part, or under his direction by line which shall not cross the Porterfield ridge and the *meets*, bounds and abuttals so established shall be regarded as the *meets*, bounds and abuttals intended by this conveyance, but not including one and half acres sold to Sam'l Allen by s'd Laidley, and also his entire interest in a tract of land, containing 240 acres purchased of J. M. Pennybaker and wife by said Laidley and conveyed by his directions to C. P. Huntington, the' title to which said Laidley covenants to warrant and defend generally. And the said party of the first part doth hereby covenant with the said party of the second part that he will warrant generally the property hereby conveyed.

Witness the following signatures and seals.

ALBERT LAIDLEY. [SEAL.]
VESTA LAIDLEY. [SEAL.]

STATE OF WEST VIRGINIA, *Cabell County,* } *To wit:*

I, Jno. W. Church, notary public in and for the county and State aforesaid, do certify that Albert Laidley and Vesta Laidley, his wife, whose names are signed to the writing hereto annexed, bearing date on the 13th day of April, 1870, have acknowledged the same before

me in my county aforesaid, and, the said Vesta Laidley, being examined by me privily and apart from her husband and having the writing aforesaid fully explained to her, she, the said Vesta Laidley, acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 13th day of April, 1870.

JOHN W. CHURCH,
Notary Public.

STATE OF WEST VIRGINIA, }
Cabell County. }

RECORDER'S OFFICE, *April* 16, 1870.

458 The foregoing deed, with U. S. internal revenue stamps thereon for thirty-seven (37) dollars, was this day presented in said office, and, together with the certificate thereon, admitted to record.

Teste: TH. J. HAYSLIP, *Recorder.*

And the said defendant proved that for the years 1884 and 1885 the land in controversy was entered upon the land books of Cabell county and assessed with taxes in the name of John B. Laidley, and that said land was returned delinquent for the non-payment of said taxes so assessed in the name of said Laidley and sold by the sheriff for said taxes and purchased by said sheriff for the State.

And thereupon said defendant, further to maintain said issue upon its part, had H. C. SIMMS sworn as a witness in its behalf, who testified as follows:

Q. Were you present at the last term of court?

Ans. I was.

Q. Were you present during the trial of the case of Laidley *v.* The Central Land Company of West Virginia?

—. Yes, sir.

—. Did you listen to that trial?

—. Yes, sir; I was one of the attorneys.

—. Did you hear the motion made by the plaintiff in that case upon the introduction of the order that they have now introduced as the Summers county order?

Ans. Yes, sir.

Q. Now, then, did you hear the motion for judgment?

Ans. Yes, sir; I heard the judgment of the court as to the setting forth of this order as filed by Mr. Brown, attorney for Laidley.

Q. Do you remember what the court said to Brown in relation to that order?

Ans. I remember it.

Q. State whether or not upon the introduction of that the plaintiff didn't waive any claim *they* had, in open court, as to the right of judgment upon that order.

To the asking of this last question the plaintiff objected; which objection the court sustains, and said defendant excepted to the

ruling of the court in sustaining said objection, and prayed that its exception be saved to it, which is accordingly done.

Q. Please state whether or not upon that order there was argument of counsel before the circuit court—I mean the Summers circuit court order.

—. Yes, sir; it was argued.

Q. Please state if after that argument the plaintiff waived any claim as to judgment on it.

Objected to by plaintiff. Objection sustained, and said defendant again excepted.

Q. I want to ask you if the court didn't upon that occasion give the plaintiff the right either to demand judgment or to allow the defendant to appear.

459 Pl'ff, by counsel, objected to the asking and answering this question; which objection is sustained, and said defendant again excepted.

Q. Please state whether or not, after the decision by the court, the claim under the order was not abandoned and the defendant appeared and the case contested on the merits.

Objected to by plaintiff and sustained by the court, and said defendant again excepted.

Q. Please state whether or not the plaintiff didn't elect upon an oral decision here in court to waive *their* claim under that agreement and go into a trial upon the merits.

Objection by plaintiff and sustained by the court. The said defendant again excepted.

And thereupon said defendant rested its case.

And thereupon the plaintiff, as evidence in rebuttal, introduced and read to the jury the following deeds, decrees, and other records and writings:

1. A deed from Albert Laidley and wife to Isaac Frampton, dated the 6th day of November, 1856, and the certificates of acknowledgment and recordation thereon endorsed, in words and figures following, to wit:

This deed, made and entered into this 6th day of November in the year one thousand eight hundred and fifty-six between Albert Laidley and Vesta, his wife, of the county of Cabell, of the first part, and Isaac Frampton of the second part,

Witnesseth, that the said Laidley and wife, for and — consideration of the sum of seventeen thousand dollars, to them in hand paid, the receipt whereof is hereby acknowledged, *they* have given, granted, bargained and sold, and by these presents do give, grant, bargain and sell, unto the said Isaac Frampton, the three several tracts or parcels of land, situate, lying and being in the county of Cabell on the Ohio river the left-hand fork of Four-pole and more particularly described as follows to wit: One moi-ty of lot 37 in the

military grant to Capt. John Savage and others, as divided by commissioners and their report and plat of survey is recorded in the clerk's office of Cabell county court, and designated as the share of James Samuels and being the lower half and decreed by the chancery court as appears by said record to Richard and Benjamin Brown; bound on the north by the Ohio river, the lands of Isaac Frampton on the west by Four-pole creek on the south and on the east of T. G. F. Beuhring and containing two hundred acres be the same more or less.

Also one other tract adjoining thereto and bounded as follows, viz: Beginning at a white oak, two beeches, at the end of 8 poles S. 21 E. 8 po. from the southeast corner of the two hundred acres above granted on a line of the Watson tract, thence with the same S. 68 W. 190 po. to a black oak, white oak & *and* hickory on the top of a ridge, corner to John Holenback, thence leaving Watson's line, S. 63 po. to two double hickories and and ash, N. 86 W. 12 460 poles to two black oaks on a ridge, S. 5 W. 34 po. to a red oak on a point, S. 45 E. to two chestnut oaks on a clift of rocks, S. 32 W. 70 po. to a mulberry on the bank of the creek, S. 30 E. 72 po. to two hickories on the top of the hill, N. 55 E. 48 po. to two white oaks on the same hill, S. 54 E. 64 po. to two b-ack oaks on Beuhring's line, thence N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 po. to the beginning, containing two hundred and fifty acres more or less.

Also one other tract beginning at a gum on Four-pole creek thence N. 80 W. 57 p. and 5 links to a white oak, S. 75 W. 92 po. to a beech on the bank of the creek, S. 17 E. 70 po. to a stake by a drain, S. 83 E. 125 po. to a black oak, white oak and hickory N. 68 E. 190 po. to a white oak and two beeches N. 21 W. 8 po. to the southeast corner of the two-hundred-acre lot first granted above and with the line thereof to the beginning.

This description includes ten acres of land heretofore conveyed by the said Laidley to the said Frampton, containing by this conveyance one hundred and forty acres more or less, to have and to hold the three several tracts of land above described with all and singular the appurtenances, unto the said Isaac Frampton his heirs and assigns forever, and the s'd Albert Laidley and Vesta, his wife, for themselves and their heirs *doth* covenant and agree to warrant and forever defend the right and title to the above-described three tracts of land, containing five hundred and eighty-nine acres, more or less unto the said Isaac Frampton, his heirs, forever.

In testimony whereof the said Albert Laidley and Vesta, his wife, have hereto set their hands and seals the date above written.

ALBERT LAIDLEY. [SEAL.]
VESTA LAIDLEY. [SEAL.]

CABELL COUNTY, *To wit:*

I, Fred'k G. L. Beuhring, a justice in the county aforesaid, in the State of Virginia, do hereby certify that Albert Laidley, party to a certain deed bearing even date with these presents and hereunto

annexed, personally appeared before me in my county aforesaid and acknowledged the same to be his act and deed.

Given under my hand and seal this 6th day of November, 1856.

FRED'K G. L. BEUHRING. [SEAL.]

CABELL COUNTY, *To wit:*

We, St. Mark Russell and Fred'k G. L. Beuhring, justices of the county aforesaid, in the State of Virginia, do hereby certify that Vesta Laidley, wife of Albert Laidley, parties to a deed bearing date the 6th of November, 1856, and hereto annexed, personally appeared before us in our county aforesaid and, being examined by us privately and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Vesta Laidley, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wishes not to retract it.

461 Given under our hands and seals this 6th day of November, 1856.

S. M. RUSSELL, *J. P.* [SEAL.]
FRED'K G. L. BEUHRING. [SEAL.]

CABELL COUNTY COURT CLERK'S OFFICE, *June 25th*, 1857.

This deed, from Albert Laidley and wife to Isaac Frampton, was this day presented to me, the clerk of Cabell county court, together with the certificates of acknowledgements thereon endorsed. The same is admitted to record.

Teste: JOHN SAMUELS, *Cl'k.*

The last will and testament of the said Isaac Frampton, dated the 12th day of May, 1859, and the certificate of the probate thereon in words and figures following, to wit:

In the name of God, amen: I, Isaac Frampton of the county of Cabell and State of Virginia, being of sound mind and memory, and considering the uncertainty of this frail and transitory life do therefore make, ordain, publish, decre- this to be my last will and testament; that is to say: First, after all my lawful debts are paid and discharged, I direct my executors who are hereafter named, first to have my body inter-ed beside the remains of my father and mother; then to enclose the grave with an iron railing, having first erected a neat tombstone over my remains. I give and bequeath to Charles T. Everett, the entire use, control and benefit of my whole landed estate, proceeds of the present year's crops, all moneys due by note, account or otherwise for the next two ensuing years, the moneys, notes accounts etc., with my sorrel filley and my bed and bedding to be his forever. I next give and bequeath to my sister Rebecca J. Everett, the forty-acre field, including the two lots and houses now occupied by P. H. McCullough, bounded on the east by the farm of the late F. G. L. Buring on the south by the James river and Kanawha turnpike on the west by the land running from the said turnpike to the Ohio river, and on the north by the Ohio

river, to be hers forever. Then at the expiration of the two years above mentioned, I give and bequeath the residue of my lands estate to be divided equally between David Frampton, Hyram Frampton and Charles T. Everett each by one paying to Ephraim Frampton the sum of one hundred dollars. Likewise, I make, constitute and ap-oint Charles T. Everett and P. H. McCul-ough to be executors of this my last will and testament, hereby revoking all former wills made by me.

In witness whereof/ I have hereunto subscribed my name and affixed my seal this 27, day of September 1860.

his
ISAAC x FRAMPTON. [SEAL.]
mark.

Teste:
P. H. McCULLOUGH.
ROBERT REYNOLDS.

462 CABELL COUNTY COURT CLERK'S OFFICE, *Oct. 1st*, 1860.

The last will and testament of Isaac Frampton, dec'd, was this day presented in court. The same is ordered to be recorded.

A copy.
Teste: W. H. WOOD, *Cl'k.*

The plaintiff proved the following facts: (*a*) That Isaac Frampton, the son and devisee of Isaac Frampton, the elder, died in the month of September, 1860, unmarried and without issue, leaving surviving him his three brothers, David, Hiram, and Ephraim, M. Frampton and his sister, the said Rebecca Everett, as his only heirs-at-law.

The said plaintiff also introduced and read in evidence to the jury the following orders, decrees, deeds, and other writings, to wit:

A decree of the circuit court of Cabell county, entered in the chancery order book of said court on the 27th day of March, 1863, in words and figures following, to wit:

P. H. McCULLOUGH and E. M. FRAMPTON, Compl., *vs.* REBECCA J. EVERETT and Others. } In Chancery.

The commissioners appointed by an order made in this cause at the November term, 1862, having made their report of the parti-ons, survey, and settlements of the accounts for rents, the same is ordered to be filed.

And now, at this day, this cause came on to be farther heard upon the papers form-ly read, the reports of the commissioners, and the surveyor, and to which there has been no objections, and, being argued by counsel, upon consideration it is adjudged, ordered, and decreed that the report of the parti-ons and surveys and settlement of accounts for rents be and the same is approved and confirmed; and it is further ordered and decreed that the several parties be quieted in possession of the several lots to them severally assigned,

and that the parties in whom the legal title is vested do forthwith prepare, execute, and acknowledge for record apt and proper deeds conveying and releasing to each other as they have been assigned by said commissioner- by the surveyor's description thereof, and upon their failure to do so within 30 days after the rising of this court that John Laidley, who is hereby appointed a special commissioner for that purpose, do in like manner prepare, execute, and acknowledge for record for and in the name and behalf of the said parties apt and proper deeds of conveyance and relinquishment, with mutual covenants of general warrantee, and a fee of $3 for each deed is allowed, to be paid by the pl'ffs and taxed in the bill of costs; and it is further decreed that the surveyor's report be received; and it is further adjudged, ordered, and decreed that the defendant, Rebecca Everett, do pay to the pl'ffs the sum of $564.56½ *cents*, as reported by the commissioners and by them applied as further reported, to wit:

463	For the payment of the costs of this suit.....	$170 75c.
	" the payment of E. M. Frampton	183 12½
	" " " P. H. McCullough.....	69 76

and for the collection of which pl'ffs may have process of execution, and liberty is reserved to parties entitled to part of this fund to apply for process against the pl'ffs to compel them to pay over the same as above directed or any part ther-of when by them collected.

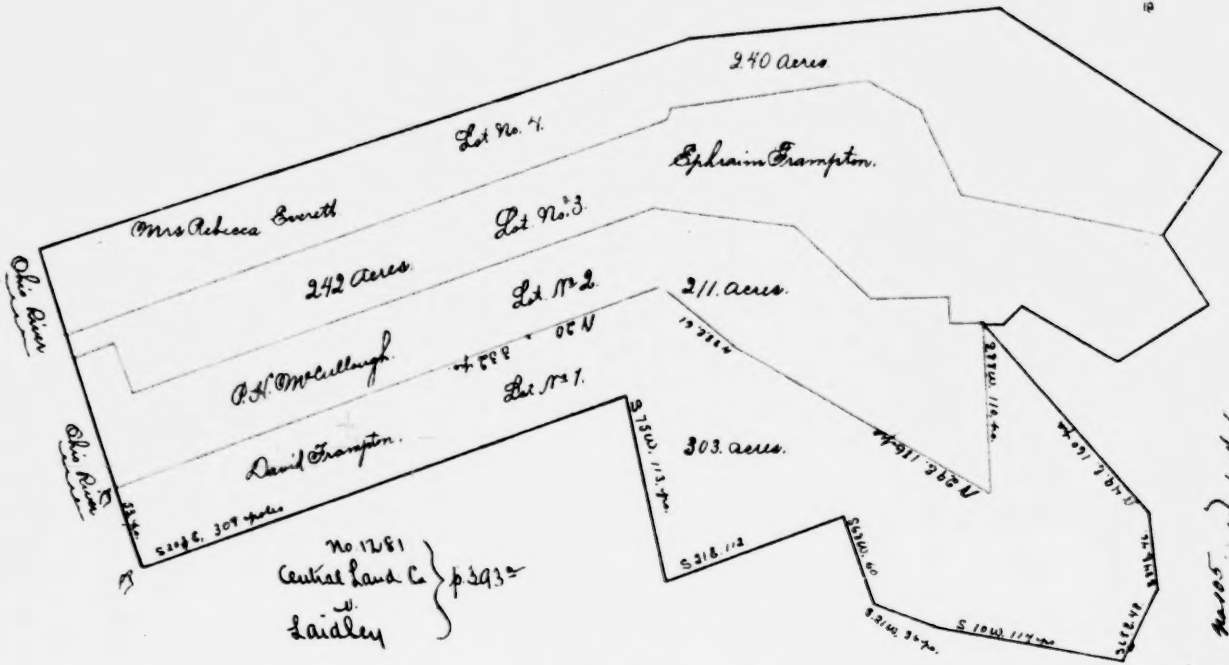
2. An order of said court, made at the same term of court, in relation to the destruction of the records of the court in words and figures following, to wit:

It appearing to the court that so much of the chancery order book of this court *that* contained the March term, 1862, proceedings, and also the proceedings of the Nov. term, 1862, have been destroyed and lost, it is thereupon ordered that the clerk of this court do re-enter all the orders and decrees and other proceedings of said terms in the chancery order book of this court as far as he may — the means of any writing to ascertain the matter that was in said book, for which services the clerk of this court shall be allowed the sum of — dollars, which is ordered to be certified to the county court of Cabell county for payment.

3. The plat of the lands of which Isaac Frampton, Jr., died seized and possessed, representing the said lands as divided into four lots, which plat is in words and figures following, to wit:

(Here follows diagram marked p. 464.)

4th. A deed between Rebecca Everett, David Frampton, and Clara, his wife, and Hiram Frampton and Clarissa, his wife, by John Laidley, sp'l commissioner, to Ephraim M. Frampton, bearing date on the 18th day of April, 1863, together with the certificate of acknowledgement and recordation thereon endorsed in words and figures following, to wit:


240 Acres
Lot No. 4.
Ephraim Frampton.
Mrs Rebecca Everett
Lot No. 3.
242 Acres
Lot No. 2.
211. Acres.
P. H. McCullough
Lot No. 1.
David Frampton.
303. acres.
Ohio River
Ohio River
No 12181
Central Land Co
to
Laidley
$393 1/2
$393 1/2
to
Heirs of Hunnicutt
&
Laidley

This indenture, — this 18th day of April, one thousand eight hundred and sixty-three, between Rebecca Everett, David Frampton and Clara, his wife, and Hiram Frampton and Clarissa, his wife, parties of the first part, and Ephraim M. Frampton, of the second part:

Whereas, the circuit court of Cabell county, at the Nov. term, 1862, in a suit therein pending, wherein P. H. McCullough and E. M. Frampton were pl'ffs and Rebecca Everett and others were def'ts, did direct commissioners to divide a tract — 996 acres of land between the parties in said suits, and by a further decree at the March term, 1863, the court confirmed the report of the commissioners in that partition, and further ordered and decreed that the parties should perfect that partition by executing and acknowledging for record apt and proper deeds of conveyance, and o- their failing to do so within twenty days from the rising of this court, that John Laidley, a special commissioner, do prepare and in the name and on the behalf of said parties, execute and acknowledge for record a deed or deeds to those *intitled* to the several lots as designated by the commissioners' and surveyor's reports. And whereas
465 the said parties have failed to make the said conveyance, this indenture therefore witnesseth, that for and in consideration of the premises, the said parties of the first part do*th* give, grant, bargain, sell, release & confirm unto the said Ephraim M. Frampton, his heirs and assigns, forever, the following-described tract, being lot No. 3 in the division of a tract which the parties inherited of Isaac Frampton, Jr., on the Ohio river in Cabell county, and bounded as follows: Beginning at a stake on the Ohio river upper corner of lot No. 2, S. 19½ 22 poles to a stake, S. 73 W. 30 poles and 14 links to a stake on the Stribling line, between two elms, S. 19½ E. 333 poles to a stone in the road on the military line, S. 7 W. 86 poles to a stake by the side of the road S. 46 W. 61 poles to a chestnut oak and hickory, S. 48 poles to two double hickories, N. 86 W. 12 poles to a black oak and hickory, S. 5 W. 34 poles to a re*a*d oak on a point S. 45 E. 14 poles to 2 chestnut oaks on a cliff of rocks, S. 32 W. 70 poles to a mulberry near an old ford, S. 30 E. 72 poles to 2 hickories on the top of a hill, N. 55 E. 48 poles to 2 white oaks on the same hill, N. 11½ E. 120 poles to a black oak and white oak on a point, N. 70 E. 50 poles to a white oak on a point among some rocks, N. 30 E. 36 poles to 2 white oaks, N. 13 W. 120 poles to a stake from which a small sycamore stands S. 33 W. 3 poles 27 links, and another S. 2½ E. 3 poles and 6 links 1,70¾ W. 1 pole and 24 links to a stake from which a small sycamore stands S. 1½ E. 2 poles and 3 links, N. 19¼ W. 377 poles to a stake on the river; thence S. 73 W. 15 poles and 14 links to the beginning; containing 242 acres. To have and to hold the above-described tract of land unto the said Ephraim M. Frampton, his heirs and assigns, forever. And the said parties of the first part *doth* covenant and agree to warrant and defend the right and title to said tract of land unto the said E. M. Frampton, his heirs and assigns forever.

In witness whereof the said parties, by the said John Laidley as

commissioner as aforesaid, hath hereunto set their hands and seals the day and year first above written.

REBECCA EVERETT, [SEAL.]
By JOHN LAIDLEY, *Sp'l Com'r.*
DAVID FRAMPTON, [SEAL.]
By J. LAIDLEY, *Sp'l Com'r.*
CLARA FRAMPTON, [SEAL.]
By J. LAIDLEY, *Sp'l Com'r.*
HIRAM FRAMPTON, [SEAL.]
By J. LAIDLEY, *Sp'l Com'r.*
CLARISSA FRAMPTON, [SEAL.]
By J. LAIDLEY, *Sp'l Com'r.*

STATE OF WEST VIRGINIA, }
Cabell County, } *ss:*

I, John Laidley, dept. clerk for John S. Witcher, clerk of said county, do certify that John Laidley, whose name is signed to the writing above, bearing date 18th of April, 1863, has acknowl-
466 ed- the same before me in my s'd county to be the act and deed of the principals, the grantors therein named.

Witness my hand this 18th day of April, 1863.

JOHN LAIDLEY, JR., *Dpt. Cl'k.*

CABELL COUNTY COURT CLERK'S OFFICE, *May 30th*, 1863.

The foregoing deed from John Laidley, spec'l com'r, to Ephraim M. Frampton was this day presented to me, the clerk of Cabell county court, with the certificate of acknowledgement thereon endorsed.

The same is admitted to record.

Teste:

J. S. WITCHER, *Cl'k,*
By T. J. MERRITT, *D. C.*

5th. A deed from Ephraim M. Frampton and Nancy, his wife, David Frampton and wife, and Hiram Frampton and wife, by John Laidley, special commissioner, to Rebecca Everett, bearing date on the 18th day of April, 1863, together with the certificates of acknowledgement and recordation thereon endorsed, in words and figures following, to wit:

This indenture made and entered into this 18th day of April one thousand, eight hundred and sixty-three between Ephraim M. Frampton and Nancy, his wife, David Frampton and his wife and Hiram Frampton and Clarissa, his wife, parties of the first part, and Rebecca Everett of the second part:

Whereas, the circuit court of Cabell county at the Nov. term, 1862, in a suit therein pending, wherein P. H. McCullough and E. M. Frampton were complainants and Rebecca Everett, David Frampton and Hiram Frampton, were def'ts, did direct commissioners to divide a tract of 996 acres of land between the parties in said suit, and by a further decree in the same cause at March term,

1863, the court confirmed the report of said commissioners in that partition and further ordered and decreed that the parties should perfect that partition by executing and acknowledging for record a pt. and proper deeds of conveyance and on their failing to do so within twenty days after the rising of the court, that John Laidley, a special commissioner, do prepare and in the name and on behalf of the said parties execute and acknowledge for record a deed or deeds, to those entitled to the several lots as designated by the commissioners' and surveyor's reports. And whereas the said parties have failed to make such conveyance. This indenture therefore,

Witnesseth, that for and in consideration of the premises, the said parties of the first part *doth* give, grant, bargain, sell, release and confirm unto the said Rebecca Everett, her heirs and assigns, forever, the following-described tract, being lot No. 4, in the division of a tract which the parties inherited from Isaac Frampton, Jr., on the Ohio river, in Cabell county, and bounded as follows: Beginning at a stake corner of lot No. 3, on the Ohio river S. 19¼ E. 377 poles to a stake from which a small sycamore stands S. 1½ E. 2 poles & 3 links, N. 70¾ E. 1 pole and 24 links to a stake from which
467 the above sycamore stands S. 33 W. 3 poles and 27 links and another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and white oak on a point S. 11½ W. 120 poles to 2 white oaks on a hill, S. 54 E. 62 poles to 2 black oaks N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and 2 beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, containing 240 acres; to have and to hold the above-described tract of land unto the said Rebecca Everett, her heirs and assigns, forever; and the said parties of the first part *doth* covenant and agree to warrant and defend the right and title to said tract of land unto the said Rebecca Everett, her heirs and assigns forever.

In witness whereof the said parties by John Laidley, as commissioner as aforesaid, *hath* hereunto set their hands and seals the day and year first above written.

EPHRAIM M. FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Spec'l Com'r.*
NANCY FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Spec'l Com'r.*
DAVID FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Spec'l Com'r.*
CLARA FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Spec'l Com'r.*
HIRAM FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Spec'l Com'r.*
CLARISSA FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Spec'l Com'r.*

STATE OF VIRGINIA, }
County of Cabell. }

I, John Laidley, Jr., dept. clerk for J. S. Witcher, clerk of the county aforesaid, do certify that John Laidley, whose name is signed to the writing above, bearing date 18th of April, 1863, has acknowledged the same before me, in my said county, to be the act and deed of the principals, the grantors therein named.

Witness my hand this 18th day of April, 1863.

JOHN LAIDLEY, JR., *Dept. Cl'k.*

CABELL COUNTY COURT CLERK'S OFFICE, *May 30th*, 1863.

The foregoing deed from John Laidley, special commissioner, to Rebecca Everett was this day presented to me, the clerk of Cabell county court, with the certificate of acknowledgment thereon endorsed. The same is admitted to record.

J. S. WITCHER, *Cl'k,*
By T. J. MERRITT, *D. C.*

6th. A deed from Rebecca Everett, Ephraim M. Frampton and wife, Hiram Frampton and wife, by John Laidley, sp'l com'r,
468 to David Frampton, bearing date on the 18th day of April, 1863, together with the certificates of acknowledgment and recordation thereon endorsed, in words and figures following, to wit:

This indenture made and entered into this 18th day of April, one thousand, eight hundred and sixty-three, between Rebecca Everett, Ephraim M. Frampton and Nancy, his wife, and Hiram Frampton and C-arrissa, his wife, parties of the first part and David Frampton of the second part:

Whereas, the circuit court of Cabell county at the Nov. term, 1862, in a suit therein pending wherein P. H. McCullough and E. M. Frampton were compl's, and Rebecca Everett and Hiram Frampton were def'ts, did direct commissioners to divide a tract of 996 acres of land between the parties in said suit, and by a further decree at the March term 1863, the court confirmed the report of said commissioners in their partition, and further ordered and decreed that the parties should perfect the partitions by executing and acknowledging for record apt and proper deeds of conveyance, and on their failing to do so within twenty days from the rising of the court that John Laidley, a special commissioner do prepare, and in the name and on the behalf of said parties execute and acknowledge for record a deed or deeds, conveying to those entitled to the several lots as designated by the commissioners' and surveyor's reports. And whereas the said parties have failed to make the said conveyance. This indenture therefore,

Witnesseth, that for and in consideration of the premises, the said parties of the first part doth give, grant, bargain, sell, release and confirm unto the said David Frampton, and his heirs and assigns, forever, the following-described tract, being lot No. 1, in the

division of a tract of land which the parties inherited of Isaac Frampton, Jr., on the Ohio river in Cabell county, 3 miles below Guyandotte and bounded as follows: Beginning at a stake, N. E. corner of Samuel Johnston's land and run-ing with his upper line S. 20¾ E. 308 poles to a stake, N. 80 W. 3 poles and 18 links to a stone, S. 75 W. 113 poles to a stone near a sycamore, corner of Jos. and Sam'l Johnston's; S. 21 E. 112 poles to a stake on the Watson's line, and with the same, S. 68 W. 60 poles to the "dogwood corner" S. 21 W. 36 poles to 2 white ooks, 2 beeches and sugar tree, S. 10 W. 114 poles to 3 white oaks on a ridge, S. 65 E. 48 poles to 2 white oaks at Laidley's gate on the hill, N. 84 E. 46 — to a white oak and locust stump, N. 49 E. 160 — to a black oak and chestnut oak, S. 88 W. 110 poles to a stake from which a black walnut at N. 21½ E. 2 poles and 17 links and an apple tree at S. 29½ E. 4 poles; thence N. 29 E. 186 poles to a chestnut oak on a hillside N. 33 E. 61 poles to 2 double willows, N. 20 W. 332 poles to a stake on the river, S. 73 W. 53 poles and 16 links to the beginning; containing 303 —.

To have and to hold the above-described tract of land unto the said David Frampton, his heirs and assigns forever. And the said parties of the first — doth covenant and agree to warrant and defend the right and title to said tract of land unto the said David Frampton, his heirs and assigns forever.

469 In witness whereof the said parties, by the said John Laidley, as commissioner as aforesaid, hath hereunto set their hands and seals this day and year first above written.

REBECCA EVERETT, [SEAL.]
By JOHN LAIDLEY, *Sp. Com'r.*
EPHRAIM M. FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Sp. Com'r.*
NANCY FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Sp. Com'r.*
HIRAM FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Sp. Com'r.*
CLARISSA FRAMPTON, [SEAL.]
By JOHN LAIDLEY, *Sp. Com'r.*

STATE OF VIRGINIA, *Cabell County,* } *ss:*

I, John Laidley, Jr., dept. clerk for J. S. Witcher, clerk for the county aforesaid, do certify that John Laidley, whose name is signed to the writing above, bearing date 18th of April, 1863, has acknowledged the same before me, in my said county, to be the act and deed of the principals therein named.

Witness my hand this 18th day of April, 1863.

JOHN LAIDLEY, —., *Dept. Cl'k.*

CABELL COUNTY COURT CLERK'S OFFICE, *May 30th,* 1863.

The foregoing deed from John Laidley, special commissioner, to David Frampton was this day presented to me, the clerk of Cabell

county court, with the certificate of acknowledgement thereon endorsed.

The same is admitted to record.

J. S. WITCHER, *Clk*,
By T. J. MERRITT, *D. C.*

7. The petition of P. H. McCullough, filed in the circuit court of Cabell county on the — day of ——, 1870, with the verification thereof endorsed thereon by the clerk of said court, in words and figures following, to wit:

To the Hon. James H. Ferguson, judge of the Cabell circuit court, West Virginia:

Your petitioner, P. H. McCullough, would respectfully represent that years ago he, in conjunction with one E. M. Frampton, brought suit in the Cabell circuit court to obtain partition of lands in this county descended from Isaac Frampton, deceased, to his heirs, from one of whom your petitioner had purchased his interest; that such proceedings were had in said cause that at the March term, 1863, a decree was made confirming said partition and appointing John Laidley, now deceased, to make conveyance to the partitioners; that said Laidley departed this life on the — day of ——, 1864, without executing said conveyances, and no deed has been made to your petitioner, as directed therein.

The said decree is left unexecuted.

470 Wherefore your petitioner prays that a commissioner be substituted in lieu of said Laidley to execute said conveyance, &c.

P. H. McCULLOUGH.

Endorsed: Sworn to in open court. Jos. F. Miller, clerk.

8th. A decree of the said circuit court of Cabell county entered in said petition substituting T. B. Kline as a special commissioner in the room and stead of said John Laidley, deceased, in words and figures following, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on Friday, the 6th day of May, 1870.

This day P. H. McCullough presented his petition in open court, properly sworn to, asking the substitution of a commissioner in the case of P. H. McCullough and E. M. Framptom *vs.* Rebecca Everett and others, and it appearing to the court that John Laidley, Esq., formerly commissioner in said case, has departed this life without executing the conveyance directed by a decree in said case to be made by him to the petitioner, P. H. McCullough, it is now ordered that T. B. Kline, Esq., be substituted as commissioner in lieu of said John Laidley, who shall have the same powers and perform the same duties given to and required of said John Laidley, deceased, and he shall be allowed the same fees for his services & report his proceedings to the next term of this court.

9. A deed made by said T. B. Kline, special commissioner, to

A. Laidley, bearing date on 16the day of June, 1870, together with the certificates of acknowledgement and recordation thereon endorsed, in words and figures following, to wit:

This deed made and entered into this the 16th day of June, 1870, by and between Rebecca J. Everett, David Frampton and Apriel, his wife, Ephraim M. Frampton and Nancy, his wife, and Hiram Frampton and Clara, his wife, by Thomas B. Kline, special commissioner as hereinafter named and P. H. McCullough and Fannie M. his wife, of the first part and Albert Laidley of the second part.

Whereas by a decree of the circuit court of Cabell county, Virginia, now West Virginia made and entered at the November term thereof 1862, in a suit therein pending wherein P. H. McCullough, and Ephraim M. Frampton were plaintiffs, and Rebecca Everett David Frampton and Hiram Frampton were defendants, it was ordered and decreed that commissioners named therein be appointed to divide a tract of nine hundred and ninety-six acres of land between the parties in said suit. And whereas by a further decree in the same cause at the March term 1863, the court confirmed the report of the said commissioners in their partition and further ordered and decreed that the parties should perfect the said partition by executing and acknowledging for record apt and proper deeds of conveyance for the land set apart to each respectively and that the parties be quieted in possession of the land so partitioned to them and on their failing to execute such deeds within thirty days from the rising of the said court, that John Laidley, who was thereby
471 appointed a special commissioner for the purpose, do prepare and in the name and on behalf of said parties execute and acknowledge for record a deed, or deeds conveying to those entitled to the several lots assigned by the commissioners' and surveyors' report. And whereas the said parties have failed to make said deeds. And whereas the said special commissioner John Laidley, departed this life without making such conveyance to the said P. H. McCullough of the portion set apart and assigned to him by said commissioners. And whereas by a decree of the said court made on the — day of —— 1870, the said Thomas B. Kline, was substituted in the room and stead of the said John Laidley to make said conveyance to said P. H. McCullough, a special commissioner. And whereas the said P. H. McCullough and wife have requested said commissioner Thomas B. Kline to make the conveyance of the land assigned said McCullough as aforementioned to Albert Laidley party of the second part.

Now therefore this deed

Witnesseth, that for and in consideration of the premises and in consideration of two thousand dollars paid by said Laidley to said P. H. McCullough, the said parties of the first part do hereby give, grant, bargain, sell, release convey and confirm unto the said Albert Laidley, his heirs and assigns, forever the following-described tract of land, being lot No. — in the division of the said tract of 996 acres which the said parties inherited from Isaac Frampton, the younger, on the Ohio river, in said Cabell county, three miles from

the mouth of the Guyandotte river, except four acres more or less sold by said McCullough, to E. T. Mitchell.

Beginning at a stake on the bank of the Ohio river, N. E. corner of land sold by J. L. and W. L. Johnson to A. Laidley, thence with the lines of said land S. 20 E. 334 poles to 2 double willows, S. 33 W. 61 poles to a chestnut oak, on a hillside, S. 29 W. 186 poles to a stake from which a black walnut stands N. 21½ E. 2 poles and 7 links and an apple tree is S. 29½ E. 4 poles; thence N. 88 E. 110 poles to red oak and chestnut oak, thence leaving said land N. 5 W. 22 poles to a black oak and hickory, S. 86 E. 12 poles to two double hickories and an ash, N. 48 poles to a stake from which a chestnut oak is S. 71 E. 13 links and a scrubby hickory is N. 20 E. 13 links, N. 46 E. 61 poles to a stake by the side of the hill, N. 7 E. 86 poles to a stone in the road, on the military line, N. 19½ W. 355 poles to a stake on the bank of the river thence down the river to the beginning; containing 207 acres, be the same more or less. And the said P. H. McCullough warrants generally the property hereby conveyed, and together with his said wife becomes, grantors to this deed to testify their covenant to the making of the same. But the said P. H. McCullough, reserves two lots of the said 207 acres, 50 feet by 100 feet each to be selected by him and which is not intended to be conveyed here. To have and to hold the said tract of 207 acres of land as above described unto the said Albert Laidley,
472 his heirs and assigns forever. And the parties of the first part warrant the title of the property hereby conveyed.

(Stamp, $11.00.)

REBECCA EVERETT, [SEAL.]
By THOMAS B. KLINE,
Special Commissioner.
DAVID FRAMPTON, [SEAL.]
By THOMAS B. KLINE,
Special Commissioner.
CLARA FRAMPTON, [SEAL.]
By THOMAS B. KLINE,
Special Commissioner.
EPHRAIM FRAMPTON, [SEAL.]
By THOMAS B. KLINE,
Special Commissioner.
NANCY FRAMPTON, [SEAL.]
By THOMAS B. KLINE,
Special Commissioner.
P. H. McCULLOUGH, [SEAL.]
By THOMAS B. KLINE,
Special Commissioner.
HIRAM FRAMPTON, [SEAL.]
By THOMAS B. KLINE,
Special Commissioner.
CLARISSA FRAMPTON, [SEAL.]
By THOMAS B. KLINE,
Special Commissioner.
P. H. McCULLOUGH, [SEAL.]
FANNIE M. McCULLOUGH.

STATE OF WEST VIRGINIA, *Cabell County,* } *ss:*

I, Thomas J. Hayslip, recorder of the county and State aforesaid, do certify that P. H. McCullough and Fannie M. McCullough, his wife, whose names are signed to the writing hereto annexed, bearing date on the 16th day of June, 1870, personally appeared before me in said county and acknowledged same to be their act and deed; and the said Fannie M. McCullough being examined by me privily and apart from her said husband and having the writing aforesaid fully explained to her, she, the said Fann-e M. McCullough, acknowledged that she had willingly signed the same and does not wish to retract it.

THO. J. HAYSLIP, *Recorder.*

STATE OF WEST VIRGINIA, *Cabell County,* } *ss:*

I, Thomas J. Hayslip, recorder of the county and State aforesaid, do certify that Thomas B. Kline, whose name is signed to the writing hereto annexed as special commissioner, bearing date on the 16th day of June, 1870, personally appeared before me in said county and acknowledged the same to be his act.

Given under my hand this 19th day of July, 1870.

THO. J. HAYSLIP, *Recorder.*

473 RECORDER'S OFFICE, *Cabell County, West Virginia,* } *ss:*

This deed, from Thomas B. Kline, commissioner, *et al.* to Albert Laidley, was this day presented to me, the recorder of the county and State aforesaid, together with the certificate of acknowledgement thereon endorsed. The same is admitted to record.

Given under my hand this 19th day of July, 1870.

JOHN W. CHURCH, *Dept.,*
For THOMAS J. HAYSLIP, *Recorder.*

10. A deed made by T. B. Kline, special commissioner, to P. H. McCullough, bearing date on the 23rd day of Nov., 1872, together with the certificate of acknowledgement and recordation thereon endorsed, in words and figures following, to wit:

This deed made and entered into this 23rd day of November, 1872, by and between Rebecca J. Everett, David Frampton and —— Frampton, his wife; Ephraim M. Frampton and Nancy Frampton, his wife, and Hiram Frampton — his wife, by Thomas B. Kline, special commissioner as hereinafter named, parties of the first part, and P. H. McCullough, party of the second part.

Whereas by a decree of the circuit court of Cabell county, Virginia, now West Virginia made and entered at the November term thereof 1862, in a suit therein pending wherein P. H. McCullough and Ephraim M. Frampton were plaintiffs and Rebecca J. Everett, David Frampton and Hiram Frampton were defendants it was

ordered and decreed that commissioners named therein be appointed to divide a tract of nine hundred and ninety-six acres of land between the parties in said suit.

And whereas by a further decree in the same cause at the March term 1863, the court confirmed the report of said commissioners in their partition and further ordered and decreed that the parties should perfect the said partition by executing and acknowledging for record apt and proper deeds of conveyance for the land set apart for each, respectively and that the parties be quieted in possession of the land so partitioned to them and on their failure to execute such deeds within thirty days from the rising of said court, that John Laidley who was thereby appointed a special commissioner for the purpose do prepare and in the name and on the behalf of said parties execute and acknowledge for record a deed or deeds conveying to those entitled to the several lots assigned by the commissioner's and surveyor's reports.

And whereas said parties failed to make said deeds and whereas the said special commissioner John Laidley departed this life without making such conveyance to the said P. H. McCullough, for the portion set apart and assigned to him by said commissioners

And whereas by a decree of said court made on the — day of —— 1870 the said Thomas B. Kline, was substituted in the room and stead of the said John Laidley, to make said conveyance to said P. H. McCullough, as special commissioner

And whereas the said P. H. McCullough, requested the said commissioner to convey said land to Albert Laidley,

474 And whereas said commissioner did by deed bearing date the 16th day of June 1870 convey the land hereinafter described to Albert Laidley which is evidenced by P. H. McCullough, signing and acknowledging said deed as party to the same. And whereas the said McCullough, in said conveyance made a reservation which is in the words and figures following, viz: "But the said P. H. McCullough reserves two lots from the said 207 acres 50 feet by 100 feet each to be selected by him and which is not intended to be conveyed here." And whereas the said P. H. McCullough has since made his selection of the reservation aforesaid and caused the same to be surveyed into three equal parts or lots. And whereas the said P. H. McCullough has requested the said commissioner to convey said lots as per the survey above referred to:

Now, therefore, this deed,

Witnesseth, that for and in consideration of the premises and in consideration of one dollar paid by said P. H. McCullough to said commissioner the said parties of the first part do*th* hereby give, grant, bargain, sell, release, convey and confirm unto the said P. H. McCullough, his heirs and assigns, forever, the following-described lot of ground being part of lot No. — in the division of the said tract of nine hundred and ninety-six acres which the said parties inherited from Isaac Framton, the younger, on the Ohio river in said county of Cabell three miles from the mouth of Guyandotte river and bounded as follows, to wit: Beginning, at a stone southwest corner of Fourth street and Fifth avenue northeast corner of

block No. 37, as represented on a map of the plan of the city of Huntington, made by Rufus Cook, civil engineer, thence S. 14 E. 100 feet, thence S. 76 W. 50 feet, thence N. 14 W. 100 feet to the south side of Fifth avenue, thence N. 76 E. 50 feet to the beginning. To have and to hold the said tract of land as above described unto the said P. H. McCullough his heirs and assigns forever.

And the said parties of the first part warrant generally the title to the property hereby conveyed.

Witness the following signatures and seals.

REBECCA EVERETT, [SEAL.]
By T. B. KLINE, *Spec. Com'r.*
CLARA FRAMPTON, [SEAL.]
By T. B. KLINE, *Spec. Com'r.*
EPHRAIM FRAMPTON, [SEAL.]
By T. B. KLINE, *Spec. Com'r.*
DAVID FRAMPTON, [SEAL.]
By T. B. KLINE, *Spec. Com'r.*
NANCY FRAMPTON, [SEAL.]
By T. B. KLINE, *Spec. Com'r.*
P. H. McCULLOUGH, [SEAL.]
By T. B. KLINE, *Spec. Com'r.*
HIRAM FRAMPTON, [SEAL.]
By T. B. KLINE, *Spec. Com'r.*
CLARISSA FRAMPTON, [SEAL.]
By T. B. KLINE, *Spec. Com'r.*

475 STATE OF WEST VIRGINIA, }
County of Cabell, } *ss:*

I, John W. Church, a notary public in and for the county and State aforesaid, do certify that T. B. Kline, special commissioner, whose name is signed to the writing hereto annexed, bearing date on the 23rd day of November, 1872, personally appeared before me in said county and acknowledged the same to be his act and deed.

Given under my hand this 23rd day of November, 1872.

JNO. W. CHURCH,
Notary Public.

RECORDER'S OFFICE, CABELL COUNTY,
WEST VIRGINIA, *Dec. 27th*, 1872.

This deed, from Rebecca Everett *et al.* to P. H. McCullough, was this day presented in said office and, with the certificate thereon, was admitted to record.

Teste:

T. J. HAYSLIP, *Recorder,*
By T. J. F. HAYSLIP, *Dept.*

11. A deed from David Frampton to J. L. Johnson and Wm. L. Johnson, bearing date on the 23rd day of June, 1863, together with the certificates of acknowledgement and recordation thereon endorsed, in words and figures following, to wit:

This indenture made and entered into this 23d day of June, one thousand eight hundred and sixty-three between David Frampton and Clara, his wife, of the first part and Wm. L. Johnson and John L. Johnson, of the second part, witnesseth, that the said Frampton and wife for and — consideration of the sum of five thousand dollars to the parties of the first part in hand paid, *hath* given, granted, bargained and sold and by these presents do*th* give, grant, bargain and sell unto the said, *unto the said* Wm. L. Johnson and John L. Johnson a certain tract of land, situate in Cabell county, which they inherited of Isaac Frampton, dec'd, and they seized by virtue of a partition deed and bounded as follows, to wit:

Beginning at a stake N. E. corner of Samuel W. Johnston's land and running with his upper line S. 20¾ E. 308 poles to a stake N. 80 W. 3 poles and 18 links to a stone in the ground, S. 75 W. 113 poles to a stone in the ground near a sycamore tree corner of James and Samuel W. Johnston's S. 21 E. 112 poles to a stake on Watson's line and with the same S. 68 W. 60 poles to the dogwood corner, S. 21 W. 36 poles to two white oaks, two beeches and a sugar tree; S. 10 W. 114 poles to three white oaks on a ridge, S. 65 E. 48 poles to 2 white oaks at Laidley's gate, on the hill, N. 84 E. 116 poles to a white oak and locust stump, N. 49 E. 160 poles to a black oak and chestnut oak, *and chestnut oak*, S. 88 W. 110 poles to a stake from which a black walnut stands N. 21½ E. 2 poles and 17 links and an apple tree is S. 29½ W. 4 poles; thence N. 29 E. 186 poles to a chestnut oak on a hillside, N. 33 E. 61 — to 2
476 double willows, N. 20 W. 332 poles to a stake on the Ohio river, S. 73 W. 53 poles and 16 links to the beginning; containing 303 acres to have and to hold the above granted piece or parcel of land unto the s'd Wm. L. Johnston and John L. Johnston of the second part to their own proper use and behoof. And the said parties of the first part covenants agrees, warrand and forever defends the right and title generally unto the said Wm. L. Johnston and John L. Johnston, as witness their hands and seals this day and year first above written.

DAVID FRAMPTON. [SEAL.]
CLARA A. FRAMPTON. [SEAL.]

STATE OF VIRGINIA, } *ss:*
Cabell County, }

I, T. J. Merritt, deputy clerk, for J. S. Witcher, clerk for the county aforesaid, do certify that David Frampton, whose name is signed to the foregoing deed, bearing date the 23rd day of June, 1863, has acknowledged the same before me in my said county.

Given under my hand this 23d day of June, 1863.

T. J. MERRITT, *Dept. Clk,*
For J. S. WITCHER.

STATE OF VIRGINIA, } *ss:*
County of Cabell, }

I, T. J. Merritt, deputy clerk for J. S. Witcher, clerk of the county aforesaid, do certify that Clara Frampton, the wife of David Framp-

ton, whose name is signed to the foregoing deed, bearing date the 23d day of June, 1863, personally appeared before me in the county aforesaid, and, being examined by me privily and apart from her husband and having the writing aforesaid fully explained to her, she, the said Clara Frampton, acknowledged the said writing to be her act and deed; that she had willingly signed the same and does not wish to retract it.

Given under my hand this 23d day of June, 1863.

T. J. MERRITT, *Dept. Cl'k*,
For J. S. WITCHER.

CABELL COUNTY COURT CLERK'S OFFICE, *June* 23*d*, 1863.

The foregoing deed, from David Frampton to Wm. L. Johnston and John L. Johnston, was this day presented to me, the clerk of Cabell county court, with the certificate of acknowledgements thereon endorsed. The same is admitted to record.

Teste: J. S. WITCHER, *Cl'k*,
By T. J. MERRITT, *D. C.*

12. A deed from Ephraim M. Frampton to Albert Laidley, bearing date on the 22 day of July, 1870, with the certificates of acknowledgement and recordation thereon endorsed, in words and figures following, to wit:

477 This indenture, made and entered into this July 22d, one thousand eight hundred and seventy, between Ephraim M. Frampton and Nancy M. Frampton, his wife, parties of the first part, and Albert Laidley, of the second part,

Witnesseth, that for and in consideration of the sum of fourteen thousand nine hundred dollars, the receipt whereof is hereby acknowledged the said parties of the first part do hereby sell and convey unto the said Albert Laidley, his heirs and assigns forever, the following-described tract of land lying in Cabell county, West Virginia on the Ohio river and bounded as follows, to wit: Beginning at a stake on the Ohio river upper corner of lot No. 2, S. 19½ E. 22 poles to a stake, S. 73 W. 30 poles and 14 links to a stake on the Stribbling line, between two elms, S. 19½ E. 333 poles to a stone in the road on the military line S. 7 W. 86 poles to a stake by the side of the road, S. 46 W. 61 poles to a chestnut oak and hickory S. 48 poles to a chestnut and two double hickorys. N. 86 W. 12 poles to a black oak and hickory, S. 5 W. 34 poles to a red oak on a point, S. 45 E. 14 poles to two chestnut oaks on a cliff of rocks, S. 32 W. 70 poles to a mulberry near an old ford, S. 30 E. 72 poles to two hickories on the top of the ridge N. 53 E. 48 poles to two white oaks on same hill, N. 11½ E. 112 poles to a black oak and white oak on a point N. 70 E. 50 poles to a white oak on a point among some rocks, N. 30 E. 36 poles to two white oaks, N. 13 W. 120 poles to a stake from which a small sycamore stands S. 33 W. 3 poles and 7 links and another stands S. 2½ E. 3 poles and 6 links, S. 70¾ W. 1 pole and 24 links to a stake from which a small sycamore — S. 1½ E. 2 poles and 3 links, thence N. 19¼ W. 377 poles to

a stake on the river, S. 73 W. 15 poles and 14 links to the beginning, containing two hundred and forty-two acres.

To have and to hold the said tract of land unto the said Albert Laidley.

And the said parties of the first part bind themselves to warrant generally the title to the above-described land.

Witness our hands and seals this the day and date above written being lot No. 3, in the division of the lands of Isaac Frampton, Jr. dec'd, about three miles below Guyandotte river.

E. M. FRAMPTON. [SEAL.]
N. M. FRAMPTON. [SEAL.]

Signed and sealed in the presence of—
R. Z. JOHNSON.
S. B. DEMELLARD.

(Stamp, $15.00.)

THE STATE OF OHIO, } ss:
Scioto County, }

Be it remembered that on the 22d day of July, A. D. 1870, personally came before me, a notary public in and for Scioto
478 county, Ohio, Ephraim M. Frampton and Nancy M. Frampton, his wife, the grantors in the foregoing instrument, and acknowledged the signing and sealing thereof to be their free act and deed; and the said Nancy M. Frampton, wife of the said Ephraim M. Frampton, being at the same time examined by me separate and apart from her said husband and the contents of said instrument being by me made known to her, she then declared that she had voluntarily signed, sealed, and acknowledged the same, and that she was still satisfied therewith as her free act and deed.

In witness whereof I hereto set my hand and notarial seal the day and year last above written.

ROBERT N. SPRY,
Notary Public, Scioto County, Ohio.

THE STATE OF OHIO, } ss:
Scioto County, }

I, J. B. Demillard, clerk of the court of common pleas within and for said county, do hereby certify that Robert N. Spry, Esq., before whom the annexed instrument was acknowledged, was at the time thereof a notary public for said county, duly commissioned and sworn; that his signature thereto is genuine and that full faith and credit should be given to all his official acts as such.

Witness my hand and the seal of said court, at Portsmouth, this 22d day of July, A. D. 1870.

S. B. DEMILLARD, *Clerk.*

RECORDER'S OFFICE, } ss:
Cabell County, West Virginia, }

This deed from E. M. Frampton and wife to Albert Laidley was this day presented to me, the recorder of the county and State afore-

said, together with the certificates of acknowledgments thereon endorsed. The same is admitted to record.

Given under my hand this 25th day of July, 1870.

JNO. W. CHURCH, *Dept.*,
For THOMAS J. HAYSLIP, *Recorder.*

And the said plaintiff, further to maintain the issue upon his part, proved the following facts, to wit:

1st. By T. W. PEYTON, a sworn witness:

I am clerk of the circuit court of Cabell county, and have been since Jan'y 1st, 1885. When I first went into said office I understood that the file of papers in the case of P. H. McCullough and E. M. Frampton, comp't, against Rebecca Everett and others were lost, and I have gone through the office frequently and have never been able to find but the original draft of the decree of March 27, 1863, and the plot of said lands, found together, and the petition of P. H. McCullough for the substitution of T. B. Kline as spec. com'r in room and place of John Laidley, dec'd, and the decree thereon endorsed. I have no idea where they are. I have exhausted all means in my power to find them. I can find no memorandum book for the period between 1860 and 1863, and no rule book for said period.

479 2nd. By J. L. THORNBURG, a sworn witness:

In the years 1862 and 1863 I lived just west of the land in controversy about one and a half miles; was mostly employed in farming, and did some surveying. I was acquainted with the lands of Isaac Frampton, Jr. I made a survey of the partition of said land some time between 1861 & 1865. I don't remember the date of the partition. It was during the war. I can't state distinctly how I came to do the surveying. I understood that there were certain commissioners. I don't exactly remember whether I saw an order of court or not. Alexander Johnson and son carried the chain, and J. L. Johnson, Capt. Johnson, and, I think, J. Harvey Poage were the commissioners. We surveyed the entire tract of Isaac Frampton, and then divided it into four lots. I was present and know what the commissioners done. They divided it into four lots. They assigned the lower lot No. 1 to David Frampton, lot No. 2 to Hiram Frampton, lot No. 3 to Ephraim M. Frampton, and lot No. 4 to Rebecca Everett. I think that before any actual possession of lot No. 1 was taken David Frampton sold it to Mr. Johnson, and he took actual possession of it. I think Dr. P. A. McCullough bought lot No. 2 from Hiram Frampton and he took possession of said lot. Ephraim M. Frampton took possession of lot No. 3, and held it till he sold and conveyed same to Albert Laidley, and Rebecca Everett took possession of lot No. 4, which is the land in controversy, and held it till she sold it to Sarah H. G. Pennybacker, who succeeded her in the possession, and Mrs. Pennybacker held possession till she sold to C. P. Huntington.

source is the common grantor, S. H. G. Pennybacker, and if they further find that the defendant so claims title thereto under the deed from C. P. Huntington, read in evidence, and that Huntington claimed title under the deed from J. M. Pennybacker & wife, dated February 25th, 1870, and if they further find that at the time of the purported execution of said deed she was a married woman, then the said deed is no deed in law as to said S. H. G. Pennybacker, and as to her passed no title whatever to Huntington—even a shadow or color of title, either legal or equitable—and is to be dealt with as if she were no party to it, and the title that she then had, if any, remained in her, notwithstanding said deed to Huntington, and she could and did pass her title thereto to John B. Laidley, by her deed dated January 26th, 1882.

No. 5. The court instructs the jury that if they believe from the evidence that at the time of the execution of the deed of Feb. 27, 1870, by J. M. Pennybacker & wife to C. P. Huntington Sarah H. G. Pennybacker was a married women then said deed to Huntington is absolutely void as to her and passed no title, legal or equitable, to said Huntington, and that Mrs. S. H. G. Pennybacker was as fully vested with the title to the land therein mentioned, after said deed was made, as before and had full power thereafter, by deed, to convey the same to whom she pleased and vest in such purchaser as good title thereto as she had before said deed to Hunting-
482 ton; and the court further instructs the jury that by the deed from Mrs. Sarah H. G. Pennybacker to John B. Laidley of Jan. 26th, 1882, he acquired and became vested with all the title and interest in the land which Mrs. S. H. G. Pennybacker had.

No. 6. The court instructs the jury that the decisions of the supreme court of appeals of this State rendered on a former trial of this case as to the law of the case are binding upon both the court and jury, and the jury have no right to disregard such decisions upon the advice of counsel nor for any cause.

No. 7. The court instructs the jury that if they find from the evidence that the plaintiff and defendant claim title to the land in the declaration mentioned from the same common source, to wit, Sarah H. G. Pennybacker, and that said Pennybacker derived title to said land from Rebecca J. Everett by deed dated August 18th, 1865, then it is not incumbent upon the plaintiff to prove that said Everett or the said Pennybacker had good title to said land to entitle the plaintiff to recover the same; and if they further find that the subsequent deed of said Pennybacker and John M. Pennybacker, dated February 25th, 1870, to C. P. Huntington was made while said Sarah H. G. Pennybacker was a married woman, then her said deed to Huntington vested no title in said Huntington to said land, but left the title to said land in said Sarah H. G. Pennybacker as fully as if said deed had not been signed by her and left her, the said Sarah, free to convey said land after the death of her husband to the plaintiff, John B. Laidley, and that then by her deed to John B. Laidley, dated January 26th, 1882, she passed to him all the right, title, and interest she had in said land at the time of the execution of said last-named deed.

The defendant objected to all and each of said instructions. The court overruled all of said objections and gave said seven instructions to the jury; to which rulings and each one thereof the defendant excepted.

The defendant asked the court to give the two following instructions to the jury, marked one and two, in words and figures, to wit:

No. 1. If the jury find from the evidence that C. P. Huntington purchased, paid for, and took possession of the tract of 240 acres in controversy on the 25th of February, 1870, or any time thereafter, by virtue of and under claim of the deed of John M. Pennybacker and S. H. G. Pennybacker, dated Feb'y 25th, 1870, and that the said C. P. Huntington after that time and before the institution of this action conveyed by deed said tract to the defendant, The Central Land Company of West Virginia, who took possession of said tract and has held possession thereof ever since, then the court instructs that by section eight of article eleven of the constitution of the State of West Virginia, adopted by the people thereof in the year 1863, and by section four of chapter 73 of the Code of West Virginia of 1868, which section four was taken from the Code of Virginia of 1860, and was in force in the territory included in the State of West Virginia at the time of the adoption of said constitution and had received a construction or settled interpretation before the
483 formation of the State of West Virginia in the cases of Hanston, etc., *vs.* Randolph, 12 Leigh, 445; Liter, Price & Co. *vs.* McClanachan, 2 Gratton, 280, & Grove *vs.* Zumbro, 14 Gratton, 514, and that under the interpretation given to said section four by the supreme court of appeals in the three decisions aforesaid the said deed of John M. Pennybacker and S. H. G. Pennybacker, dated February 25th, 1870, with the acknowledgements and certificate of recordation attached was sufficient to pass to C. P. Huntington at the time of its execution all of the right, title, and interest of every kind whatsoever of the said John M. Pennybacker and S. H. G. Pennybacker to said tract of 240 acres. You should find a verdict in this case for the defendant.

No. 2. The court instructs the jury that if they believe from the evidence that the deed from Sarah H. G. Pennybacker to John B. Laidley, dated January 26th, 1882, was procured by fraud from Mrs. Sarah H. G. Pennybacker, and was executed by her without knowledge on her part that she had any title to the tract of land therein mentioned, and that Laidley knew that she did have title to the land therein mentioned, but fraudulently concealed the fact from her and procured her to execute the deed under the belief that she had only a life interest in one-third of said land, then said deed is fraudulent and void and conveys no right to said J. B. Laidley.

The plaintiff objected to the giving of said instructions and each of them.

The court sustained said objections and refused to give said instructions to the jury; to which rulings of the court and each one thereof the defendant again excepted.

Thereupon the jury retired to consider of their verdict, and after

some time returned into court with a verdict for the plaintiff in the words and figures, to wit:

We, the jury, find for the plaintiff, John B. Laidley, the lands in the declaration mentioned and described by the metes and bounds reported by Surveyor Thornburg in his report filed in these causes, as follows, to wit:

Beginning at the north end of the upper line on the Ohio river, thence S. 16° 26′ E., crossing the south line of Second avenue nine feet west of the southwest corner of Second avenue and Seventh street, in the city of Huntington, and from this point measuring 6,376 feet, crossing the Chesapeake and Ohio railroad and Four Pole creek, to a stake; thence south 2° 18′ east, passing through a large white-oak line tree standing on or near the top of the river hill at 986 feet, and continuing the same course for 2,368 feet, making in all 3,354 feet to a stone, from which an 18-inch chestnut oak, marked as a side line, bears north 2½ W. 22 feet; the stone sets where the chestnut oak corner tree stood; thence with the old Beuhring line S. 49° 42 west 2,439 feet to a stake; thence leaving the Beuhring line north 52° 30′ west 636½ feet to a white oak, north 13° 35′ E. 1,929 feet to a black oak and a white oak, N. 72° 15′ east 835 feet to a white oak, N. 32° 56′ east 900 feet to where two
484 white oaks stood, N. 10° 20′ west 1,937 feet to a stake in the creek bottom, S. 73° 25′ west 32.34 feet to a stake; thence N. 16° 35′ west, crossing Four Pole creek and the railroad and at 5,962 feet crossing the south line of Second avenue 124½ feet easterly from the southeast corner of Fifth street and Second avenue and continuing thence the same course to the Ohio river; thence up the river N. 75° 40′ east 784¾ feet to the beginning, excepting therefrom the following-described parcel, to wit:

Beginning at a point on the upper line of the entire tract about 14 feet south of the south line of Fifth avenue (in the city of Huntington), thence south 69¾° west with the old turnpike 210 feet, south 16° 26′ east 210 feet, N. 69¾° east 210 feet to the upper line, and with it north 16° 26′ west 210 feet to the beginning, and that the plaintiff hath an estate in fee-simple in the lands so found for him.

Thereupon the defendant moved the court to set aside said verdict and grant it a new trial because the same is contrary to the law and the evidence. After argument the court overruled defendant's motion for a new trial and refused to set aside said verdict and to grant a new trial as asked; to which ruling of the court in refusing to set aside said verdict and refusing to grant it a new trial the defendant again excepted and asked that this its bill of exceptions to all of the rulings of the court as made during the progress of the trial as hereinbefore set out, and each one of the rulings of the court, may be signed, sealed, and made a part of the record in this case, which is done accordingly, as witness my hand and seal.

V. S. ARMSTRONG. [SEAL.]

STATE OF WEST VIRGINIA, *Cabell County,* } *To wit:*

I, T. W. Peyton, clerk of the circuit court of Cabell county, do certify that the foregoing is a true transcript of the record and proceedings made and had in the causes of John B. Laidley *vs.* The Central Land Company of West Virginia and Same *vs.* Same, in ejectment, consolidated, lately determined in said circuit court.

Given under my hand this 3rd day of October, 1890.

T. W. PEYTON, *Clerk.*

I, O. S. Long, clerk of the supreme court of appeals of the State of West Virginia, hereby certify that the petition of the Central Land Company of West Virginia, the printed transcript of record in the cause of The Central Land Company of West Virginia *vs.* John B. Laidley, from the circuit court of Summers county; the printed transcript of record in the case of John B. Laidley *vs.* Central Land Company of West Virginia and Same *vs.* Same, from the circuit court of Cabell county, and the manuscript transcript of record in the cases of John B. Laidley *vs.* The Central Land Company of West Virginia, paged from 1 to 134, inclusive, all of which are hereto attached, are the petition and transcript of record referred to in the order made by the supreme court of appeals of
485 West Virginia on the 14th day of November, 1890, a copy of which is prefixed hereto.

In testimony whereof I have hereunto set my hand and affixed the seal of our said supreme court of appeals this 29th day of November, 1890, and in the 28th year of the State.

Seal Supreme Court of Appeals, West Virginia.

O. S. LONG, *Clerk.*

(Endorsed:) Laidley *vs.* Central Land Co. Ejectment. Geo. I. Neal, Huntington, W. Va.

To the honorable the judges of the Supreme Court of the United States:

Your petitioner, The Central Land Company of West Virginia, a corporation existing under the laws of said State, respectfully represents that it is aggrieved by a final order or judgment of the supreme court of appeals of said State, made on the 14th day of November, 1890, refusing your petitioner a writ of error and supersedeas to a final judgment of the circuit court of Cabell county, West Virginia, rendered on the 12th day of September, 1890, in the consolidated ejectment cases of Jno. B. Laidley, plaintiff, *vs.* The Central Land Company of West Virginia, defendant. A complete transcript of the record of the trial of the said consolidated actions in the said circuit court, and the petition of your petitioner presented to the supreme court of appeals of said State, and the final order of said supreme court refusing to grant your petitioner a writ of error and supersedeas to the said final judgment of the circuit court of said

Cabell county are filed herewith as part of this petition, by which record it will be seen that the following state of facts exists:

On the 18th day of August, 1865, Sarah H. G. Pennybacker purchased of Rebecca J. Everett a tract of land situate in the said county of Cabell, containing two hundred and forty (240) acres, and known as lot No. 4 in the partition of the estate of Isaac Frampton, Jr., deceased, for the sum of eight thousand ($8,000.00) dollars (a copy of the deed is found on pages 37 and 38 in the printed record of the case of Jno. B. Laidley *vs.* the said Central Land Company, in the supreme court of appeals of West Virginia, filed herewith), and on the 25th day of February, 1870, before any railroad had been built from Richmond, Virginia, to the point on the Ohio river where the city of Huntington now stands, and before any city had been built where said city now stands, the said Sarah H. G. Pennybacker and her husband, John M. Pennybacker, for the sum of eleven thousand ($11,000.00) dollars cash in hand, sold and conveyed to Collis P. Huntington the said tract of two hundred and forty (240) acres, less one acre reserved as set out in the deed from said Pennybackers to said Huntington (a copy of which will be found on pages 40, 41, and 42 of the same record of the previous deed mentioned). The said Huntington was given possession actually of the said tract by the said Pennybackers, and afterwards, on the 16th day of October, 1871, for a valuable consideration, sold and conveyed said tract, less the said one-acre reservation, to your petitioner. (A copy of said deed will be found in said printed record on page 48.)

486

Your petitioner at the date of the said last-mentioned deed was given actual possession of said tract, except the said one acre, by the said Huntington, and your petitioner, having purchased several thousands of acres adjoining said tract and around it in the immediate vicinity, caused all of the land, including said tract, to be laid off into town lots, blocks, avenues, streets, and alleys, and by its agents had the "city of Huntington" incorporated under the laws of the State of West Virginia, and offered said lots for sale, and a large number of lots were sold and a prosperous city founded, whose inhabitants now number over ten thousand, and some twenty-two (22) lots have been sold of the said tract to different persons, who have built upon them and who had built upon the same at the time this action was instituted, in February, 1882. In July, 1881, John M. Pennybacker, the husband of the said Sarah, died, and in January, 1882, Jno. B. Laidley, the plaintiff below, who was a practicing attorney in the courts of West Virginia, voluntarily and without any solicitation went to the said Sarah H. G. Pennybacker, who was totally inexperienced in business matters, her husband having prior to his death attended to all business, and the said Laidley told her that she had, under "the new constitution of West Virginia," a dower interest in the land that she had sold to the said Huntington, and that if she would authorize him to bring suit to recover her dower interest he would bring it and attend to it, and if a recovery was had they would divide equally. He also made her promise on the "honor of a lady" that she would

not consult any other attorney in the matter. The said Sarah told said Laidley that she had sold said tract of two hundred and forty (240) acres, less the one-acre reservation, to Mr. C. P. Huntington, and that she had received the pay for it, and she could not understand how she could have a dower interest in her own land which she had sold and received the pay for. He replied that it was by virtue of "the new constitution of West Virginia" that she had dower. She told him that she was poor and needy and had no money to expend in litigation, and positively refused to authorize him to bring any suit to recover dower or any other interest. He then offered to give her five hundred ($500.00) dollars if she would convey said tract of two hundred and forty (240) acres to him. She says he never told her of any defect in the acknowledgment of her deed to the said Huntington, but still insisted that she was entitled to dower in it, and having obligated herself not to consult any other attorney, she went to some of her friends who were not lawyers and experienced in such matters and told them that Laidley had offered her five hundred ($500.00) dollars to make a deed of said tract of two hundred and forty (240) acres to him. They inquired of her if she had not sold and conveyed said land to Mr. Huntington and received the pay for it, and she replied that she had. They then told her she had nothing to sell in the land,
487 but if Laidley would give her five hundred ($500.00) dollars to make a deed of the same land to him, they would advise her to take it, as she would be losing nothing, in their opinion. She finally, on the 26th day of January, 1882, executed and delivered to the said Laidley a deed for the whole of the said tract of two hundred and forty (240) acres for the sum of $500.00, $100.00 of which he paid in cash and gave his notes for the balance, due in one and two years (a copy of which deed will be found on page 39 of the aforesaid printed record). The property so conveyed at the time was worth over one hundred thousand ($100,000.00) dollars. Soon after the said Laidley procured the said deed he instituted in the said circuit court of Cabell county an action of ejection against the Central Land Company of West Virginia and another action against the tenants of said company. The said actions were consolidated and tried in said circuit court on the 22nd of December, 1884, and resulted in a verdict and a judgment in favor of the said company. On the 23rd of October, 1886, the supreme court of appeals of West Virginia granted the said Laidley, plaintiff below, a writ of error to said judgment of the 22nd of December, 1884, and on the 26th day of November, 1887, the said court of appeals reversed the said judgment of December 22nd, 1884, of the said circuit court and sent the said consolidated cases back to the said circuit court for a new trial. (A copy of the judgment of the said court of appeals is found on page 2 of the Transcript in the case, and the written opinion of the court filed in the case is to be found in the 30th West Virginia Report-, on page 505.)

The said cases were again tried in the said circuit court on the 12th day of September, 1890, and a verdict and a final judgment were rendered for the plaintiff, Jno. B. Laidley, in said action. The

defendant, The Central Land Company, moved the court to set aside the verdict and grant it a new trial, which motion the court overruled and gave judgment for the plaintiff against the defendant, your petitioner, for the said tract of land of two hundred and forty (240) acres. Your petitioner tendered a bill of exceptions to all of the rulings against it during the trial, which was signed, sealed, and made a part of the record of the said consolidated cases, and is filed herewith as hereinafter set out. Your petitioner now says that material errors were made by the circuit court of Cabell county in the trial of said consolidated actions, to the prejudice of the said defendant, your petitioner, and that the supreme court of appeals of West Virginia erred in refusing to grant your petitioner a writ of error and supersedeas to the said judgment of the said circuit court of September 12th, 1890; and for an assignment of said errors would say that on the 25th day of February, 1870, the date on which said deed of Sarah H. G. Pennybacker and John M. Pennybacker was executed and delivered to the said C. P. Huntington, the said deed, as the law had been construed by the supreme court of appeals of Virginia before the separation of the State of West Virginia from the State of Virginia, in the cases of Hairston's, etc., *vs.* Randolph, 15 Leigh, 445; Siter, Price & Co. *vs.* McClanachan, 2nd Gratton, 280, and Grove *vs.* Zumbro, 14th Gratton, 514, was a good and sufficient deed and valid at the time of its execution to pass to the said Hunt-
488 ington all the right, title, and interest, both legal and equitable, of the said Sarah H. G. Pennybacker and the said John M. Pennybacker to the said tract of two hundred and forty (240) acres of land, less the one acre reservation, and that the constitution of West Virginia, adopted by the people of said last-mentioned State on the 20th of June, 1863, provided in section eight of article eleven that "such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries of the State of West Virginia when this constitution goes into operation and are not repugnant thereto shall be and continue the laws of the State until altered or repealed by the legislature," and that section four of chapter 73 of the Code of West Virginia of 1868 was taken from the Code of Virginia of 1860 and was in force in the Territory of West Virginia at the time of the said separation and as construed by the said supreme court of Virginia in the cases cited aforesaid was the law of West Virginia in 1870 at the time of the execution of the said deed of the said Sarah H. G. Pennybacker and John M. Pennybacker to C. P. Huntington and had not been altered or repealed by the legislature of West Virginia, and that the said C. P. Huntington and your petitioner had a right to rely upon such construction of the said statute contained in the Code of West Virginia of 1868 in section four of chapter 73 as theretofore put upon it by the courts and as existed until the decisions rendered in this case.

That the purchase of the said land of the said Pennybackers and the said deed conveying the same became an executed contract which no action of the judiciary of the State of West Virginia had any right, authority, or power to impair or invalidate by changing the settled

construction of said section four of chapter 73 of the Code of West Virginia of 1868.

Your petitioner now says that under and by virtue of section 10, article one, of the Constitution of the United States "no State is permitted to pass any law impairing the obligation of contracts;" that the statutory construction of the laws of West Virginia as it existed when the contract was made governed the rights of parties, and rights vested under such existing constructions of the then laws cannot be divested under said clause of the Constitution of the United States by a subsequent decision of the State courts holding contracts invalid that were valid when made; such decisions of the State courts are contrary to the Constitution of the United States.

Your petitioner further says that the circuit court of Cabell county in giving the jury instruction No. 5 in the words and figures following, to wit: "The court instructs the jury that if they believe from the evidence that at the time of the execution of the deed of February 27th, 1870, by J. M. Pennybacker and wife to C. P. Huntington Sarah H. G. Pennybacker was a married woman, then said deed to Huntington is absolutely void as to her and passed no title, legal or equitable, to said Huntington, and that Mrs. S. H. G. Pennybacker was as fully vested with the title to the land therein mentioned after said deed was made as before and had full power thereafter by deed to convey the same to whom she pleased
489 and vest in such purchaser as good title thereto as she had before said deed to Huntington.

And the court further instructs the jury that by the deed from Mrs. Sarah H. G. Pennybacker to John B. Laidley of January 26th, 1882, he acquired and became vested with all the title and interest in the land which Mrs. S. H. G. Pennybacker had," found on page 127 of the transcript of the record filed herewith, erred because it, by the judicial construction, after the execution of the deed, changed the construction of the statute, as it was heretofore construed, and voids and sets aside an executed contract, good at the time of its execution.

That said court also erred in refusing to give instruction No. 1 in the words and figures following, to wit: "If the jury find from the evidence that C. P. Huntington purchased, paid for, and took possession of the tract of 240 acres in controversy on the 25th day of February, 1870, or any time thereafter by virtue of any under claim of the deed of John M. Pennybacker and S. H. G. Pennybacker, dated February 25th, 1870, and that the said C. P. Huntington after that time and before the institution of this action conveyed by deed the said tract to the defendant The Central Land Company of West Virginia, who took possession of said tract and has held possession thereof ever since, then the court instructs that by section eight of article eleven of the constitution of the State of West Virginia, adopted by the people thereof in the year 1863, and by section four of chapter 73 of the Code of West Virginia of 1868, which section four was taken from the Code of Virginia of 1860 and was in force in the territory included in the State of West Virginia at the time of the adoption of said constitu-

tion and had received a construction or settled interpretation before the formation of the State of West Virginia in the cases of Hairston, etc., *vs.* Randolph, 12th Leigh, 445; Siter, Price & Co. *vs.* McClanachan, 2nd Gratton, 280, and Grove *vs.* Zumbro, 14th Gratton, 514, and that under the interpretation given to said section 4 by the supreme court of appeals in the three decisions aforesaid the said deed of John M. Pennybacker and S. H. G. Pennybacker, dated February 25th, 1870, with the acknowledgments and certificate of recordation attached, was sufficient to pass to C. P. Huntington at the time of its execution all of the right, title, and interest of every kind whatsoever of the said John M. Pennybacker and S. H. G. Pennybacker to said tract of 240 acres, you should find a verdict in this case for the defendant," as asked for by the defendant on page 129 of the transcript of said record, which instructions correctly states the law as it should have been given to the jury. In giving said plaintiff's instruction No. 5 and refusing instruction No. 1 the court erred and the defendant had a right to have the said error corrected by the supreme court on writ of error to said judgment of the circuit court, and the refusal of the supreme court to so correct the said error entitles your petitioner, under the act of Congress in such cases made and provided, to a writ of error from the "Supreme Court of the United States," to the "supreme court of ap-
490 peals of West Virginia," because there appears on the record of said cause a Federal question in this: that the courts of West Virginia, in construing the said statute relating to deeds and acknowledgments thereof so as to invalidate the said deed to C. P. Huntington, under which your petitioner claims, changed without legislative action the settled and established construction which existed at the time of the execution and delivery of said deed, which is contrary to the Constitution of the United States, and that there is a Federal question raised by said record in this: that the said decisions of the circuit court of Cabell county which undertakes to deprive your petitioner of his property is without due process of law, retroactive in its effect, and unconstitutional.

Your petitioner therefore prays that a writ of error and supersedeas may be allowed it to the judgment of the circuit court of Cabell county, rendered in said causes on the 12th day of September, 1890, and to the order of the supreme court of appeals of West Virginia, in refusing the said writ of error to said judgment, to the end that the said judgments and rulings may be reviewed and reversed.

And it further prays that the court may, in case a writ of error is awarded and no supersedeas granted, award a restraining order, restraining and enjoining the defendant, John B. Laidley, and all others claiming under him from taking possession of the tract of land sued for in this said suit, and that this your petitioner be left in possession of the said property until the final decision of the said case by your honorable court, and it will ever pray.

THE CENTRAL LAND COMPANY
OF WEST VA.,
By SIMMS & ENSLOW, *Att'ys.*

I, James H. Ferguson, an attorney-at-law, practicing in the Supreme Court of the United States, do certify that in my opinion there is such error in the foregoing petition set out as to entitle the petitioner, The Central Land Company of West Virginia, to have the said cause reviewed on a writ of error.

JAMES H. FERGUSON,
Attorney-at-law.

(Endorsed:) Writ of error allowed July 7, 1890. M. W. Fuller, Chief Justice of the U. States.

UNITED STATES OF AMERICA, *District of West Virginia*, } *ss*:

THE UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the supreme court of appeals of West Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said court, between John B. Laidley and The Central Land Company of West Virginia, a manifest error hath happened, to the great damage of the said The Central Land Company of West Virginia, as by its com-
491 plaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in his behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington thirty days after the date hereof, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 7th day of July, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the 116th year.

Seal Circuit Court United States, District West Virginia, Parkersburg, West Va.

L. B. DENICKER,
Clerk U. S. Circuit Court, District of West Virginia.

Allowed by—
MELVILLE W. FULLER,
Chief Justice.

(Endorsed:) Supreme Court of the United States. The Central Land Company of West Virginia *vs.* John B. Laidley. Writ of error.

I, O. S. Long, clerk of the supreme court of appeals of the State of West Virginia, hereby certify that the foregoing writ of error was exhibited to me in my office on this the 17th day of July, 1891, and that in obedience thereto I send herewith and attached hereto a transcript of the order made by the said supreme court of appeals in the case of John B. Laidley *v.* The Central Land Company of West Virginia, on the 14th day of November, 1890, together with all things concerning the same, as fully as the same have been before the judges of our said supreme court of appeals.

In testimony whereof I have hereunto set my hand and affixed the seal of our said supreme court of appeals of the State of West Virginia this 17th day of July, 1891, and in the 29th year of the State.

[Seal Supreme Court of Appeals, West Virginia.]

O. S. LONG,
Clerk of Sup. Ct. of Appeals of W. Va.

Know all men by these presents that we, F. B. Enslow, a responsible person, for and on behalf of the Central Land Company of West Virginia, a corporation, as principal, and B. W. Foster, as surety, both of Huntington, West Virginia, are held and firmly bound unto John B. Laidley in the sum of five thousand
492 (5,000) dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs and executors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 7th day of July, A. D. 1891.

The condition of the above obligation is such that whereas the said The Central Land Company of West Virginia has applied to the Supreme Court of the United States for a writ of error to a final judgment of the supreme court of the State of West Virginia, rendered in the action of ejectment of John B. Laidley *vs.* the said The Central Land Company of West Virginia by the said supreme court of West Virginia;

And whereas the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, has awarded a writ of error in said case, directed to the said supreme court of the State of West Virginia, and has required a bond of the plaintiff in error, as required by the statute:

Now, therefore, if the said The Central Land Company of West Virginia, the plaintiff in error, shall prosecute its writ of error to effect and, if it fail to make good its plea, shall answer all costs that may be awarded against it by reason of the suing out and obtaining the said writ of error, then this bond to be null and void; otherwise to remain in full force and virtue.

F. B. ENSLOW. [SEAL.]
B. W. FOSTER. [SEAL.]

Approved:

MELVILLE W. FULLER,
Chief Justice.

STATE OF WEST VIRGINIA, *Cabell County,* } *ss:*

I, George I. Neal, a notary public in and for the county and State aforesaid, do certify that F. B. Enslow and B. W. Foster, whose names are signed to the foregoing bond, have this day acknowledged the same before me in my said county.

Given under my hand and seal this 7th day of July, A. D. 1891.

[NOTARIAL SEAL.]

GEO. I. NEAL,
Notary Public.

STATE OF WEST VIRGINIA, *Cabell County,* } *ss:*

This day, before me, the undersigned notary public, personally appeared B. W. Foster, who, being duly sworn, says that he is worth over the sum of five thousand (5,000) dollars, after paying all debts and liabilities, in real estate situated in the city of Huntington.

B. W. FOSTER.

Taken, sworn to, and subscribed before me, in my county, this 7th day of July, A. D. 1891.

[NOTARIAL SEAL.]

GEO. I. NEAL, [SEAL.]
Notary Public.

493 I do hereby certify that the foregoing is a true copy of a bond and acknowledgments thereof the original of which was lodged in my office on the 17th day of July, 1891.

Seal Supreme Court of Appeals, West Virginia.

In testimony whereof I have hereunto set my hand and affixed the seal of the supreme court of appeals of the State of West Virginia this 17th day of July, 1891, and in the 29th year of the State.

O. S. LONG,
Clerk of the Sup. Ct. of Appeals of W. Va.

UNITED STATES OF AMERICA, *District of West Virginia,* } *ss:*

To John B. Laidley, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington thirty days after the date hereof, pursuant to a writ of error, wherein you are defendant in error, filed in the clerk's office of the supreme court of appeals of West Virginia, and wherein The Central Land Company of West Virginia is plaintiff in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Seal Circuit Court United States, District West Virginia, Parkersburg, West Va.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 7th day of July, in the year of our Lord one thousand eight hundred and ninety-one.

MELVILLE W. FULLER,
Chief Justice of the United States.

(Endorsed:) Supreme Court of the United States. The Central Land Company of West Virginia *vs.* John B. Laidley. Citation to October term, 189–. Service of the within citation accepted this 17th day of July, A. D. 1891. James F. Brown, att'y for John B. Laidley, defendant in error.

Endorsed on cover: Case No. 14,755. West Virginia supreme court of appeals. No. 1281. The Central Land Company of West Virginia, plaintiff in error, *vs.* John B. Laidley. Filed July 20, 1891.

494 STATE OF WEST VIRGINIA, *Cabell County,* } *ss:*

I, Frank Diehl, clerk of the circuit court for the county and State aforesaid, hereby certify that the foregoing printed record, commencing at page 1, at the bottom thereof, to and including the official certificate of T. W. Peyton, late clerk of said court, on page 258, is a true transcript of the record and proceedings made and had in the causes of John B. Laidley *vs.* The Central Land Company of West Virginia and Same *vs.* Same, in ejectment, consolidated, lately determined in said circuit court.

Given under my hand this 24th day of February, 1896.

FRANK DIEHL, *Clerk,*
By JOS. A. SPARKS, *D. C.*

Opinion.

(Filed Feb'y 26th, 1896.)

Supreme Court of the United States, October Term, 1894.

THE CENTRAL LAND COMPANY OF West Virginia, Plaintiff in Error, *vs.* JOHN B. LAIDLEY. } No. 239. In Error to the Supreme Court of Appeals of the State of West Virginia.

This was an action of ejectment brought in April, 1882, in the circuit court of Cabell county, in the State of West Virginia, by John B. Laidley against the Central Land Company of West Virginia to recover a tract of land in that State. The material facts were as follows:

Both parties claimed title under Sarah H. G. Pennybacker. On February 25, 1870, she, being the owner of the tract and the
495 wife of John M. Pennybacker, executed with her husband a deed purporting to convey the land to C. P. Huntington. That deed was duly recorded, together with certificates of the re-

corder that on the same day the husband came before him and acknowledged it to be his voluntary act and deed for the uses and purposes therein mentioned, and that the wife came before him, "and being examined by me privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Sarah G. H. Pennybacker, acknowledged that she had willingly signed, sealed, and delivered the same, and wished not to retract it." On October 16, 1871, Huntington conveyed his title to the Central Land Company. On January 26, 1882, Mrs. Pennybacker, having become a widow, executed and acknowledged in due form of law a deed of the same land to Laidley. These deeds were duly recorded.

At the first trial of this action, in December, 1884, Laidley requested the court to instruct the jury that the deed of Mr. and Mrs. Pennybacker conveyed his interest in the land; but that if she was his wife at the time of its execution and acknowledgment it was not valid, so far as it purported to be her deed, and did not convey any interest she might have in the land, and could not operate by way of estoppel against her or her grantees. The court declined to give this instruction, and a verdict was returned for the Central Land Company, and judgment rendered thereon. Laidley took the case by writ of error to the supreme court of appeals of West Virginia, which in November, 1887, held that the instruction requested by Laidley should have been given, and that the wife's acknowledgment was defective because it did not show that she had met all the requirements of the Code of West Virginia of 1868, c. 73,
496 § 4 (copied in the margin),* which the court held to be that she should acknowledge the deed to be her act, should declare that she had willingly executed it, and should declare that she did not wish to retract it. The court accordingly reversed the judgment, and ordered the verdict to be set aside and a new trial had in the circuit court of Cabell county. 30 West Virginia, 505.

In March, 1888, the Central Land Company filed in the county court a bill in equity against Laidley, alleging that Huntington, through his agent, Laidley's father, purchased from Mr. and Mrs. Pennybacker the whole title in the land, and paid the price of $11,000, which was then its full value, and took possession of it under the deed of February 25, 1870, and held it until his conveyance to the Central Land Company, which had since been in possession thereof; that Laidley procured the deed of January 26, 1882, from Mrs. Pennybacker fraudulently and with notice of all these facts and for the price of only $500, although the land had greatly increased in value; that the supreme court of appeals, in the action of ejectment, had decided that the certificate of acknowledgment

* When a husband and his wife have signed a writing purporting to convey real estate she may appear before a recorder authorized to admit such writing to record in his office, and if, on being examined privily and apart from her husband by such recorder, and having such writing fully explained to her, she acknowledge the same to be her act, and declare that she had willingly executed the same, and does not wish to retract it, such privy examination, acknowledgment, and declaration shall then be recorded by such recorder in his office.

was defective in law, and consequently the deed did not convey her title to Huntington, and therefore reversed the judgment of the court below and remanded the case for a new trial. The bill charged that, under and by virtue of that decision of the supreme court of appeals, the legal title was in Laidley, but that he held it in trust for the Central Land Company, and prayed for a declaration and execution of the trust and for an injunction against
497 the action at law and for further relief. That bill was dismissed upon a hearing, and the decree of dismissal was, on appeal, affirmed by the supreme court of appeals in February, 1889. 32 West Virginia, 134.

In September, 1890, this action of ejectment was tried again in the circuit court of Cabell county. The Central Land Company requested the court to instruct the jury that, if they found from the evidence that Huntington purchased, paid for, and took possession of the land, and afterwards, and before this action was brought, conveyed it to the Central Land Company, which took and since held possession thereof, then by section 8 of article 11 of the constitution of the State of West Virginia, adopted by the people thereof in 1863, and by section 4 of chapter 73 of the Code of West Virginia of 1868, which section 4 was taken from the Code of Virginia of 1860, and was in force in the territory included in the State of West Virginia at the time of the adoption of its constitution, and by the settled construction and interpretation which before the formation of the State of West Virginia had been given to this section by the supreme court of appeals of Virginia in the cases of Hairston *v.* Randolph, 12 Leigh, 445; Siter *v.* McClanachan, 2 Grattan, 280, and Grove *v.* Zumbro, 14 Grattan, 401, the deed of February 25, 1870, from Mr. and Mrs. Pennybacker to Huntington, acklowledged as aforesaid, was sufficient to pass to him all the right, title, and interest of both the husband and the wife in the land, and the jury should find a verdict for the defendant. The court declined so to instruct the jury, and, at Laidley's request, instructed them that if, at the time of the execution of the deed of February 25, 1870, Mrs. Pennybacker was a married woman, that deed was absolutely void as to her, and passed no title of hers, legal or equitable, to Huntington, and by her deed of January 26, 1882, Laidley became
498 vested with all her title and interest in the land.

The Central Land Company excepted to the refusal to instruct and to the instruction given, and, after verdict and judgment for Laidley, presented to the supreme court of appeals a petition for a writ of error, which was refused, "because the court is of opinion that the judgment complained of is plainly right; and the petitioner desiring to present to the Supreme Court of the United States a petition for a writ of error from this judgment, leave is hereby given to the petitioner to withdraw the petition and transcript of record aforesaid for that purpose."

The Central Land Company thereupon sued out this writ of error and assigned the following errors:

1st. "That the purchase of the said land of the said Pennybackers and the said deed conveying the same became an executed

contract, which no action of the judiciary of the State of West Virginia had any right, authority, or power to impair or invalidate by changing the settled construction of said section 4 of chapter 73 of the Code of West Virginia of 1868."

2d. "That under and by virtue of section 10, article 1, of the Constitution of the United States, no State is permitted to pass any law impairing the obligation of contracts; that the statutory construction of the laws of West Virginia, as it existed when the contract was made, governed the rights of parties and rights vested under such existing constructions of the then laws, cannot be divested under said clause of the Constitution of the United States by a subsequent decision of the State courts holding contracts invalid that were valid when made; such decisions of the State courts are contrary to the Constitution of the United States."

3d. "Because there appears on the record of said cause a
499 Federal question, in this, that the courts of West Virginia, in construing the said statute relating to deeds and acknowledgments thereof so as to invalidate the said deed to C. P. Huntington, under which your petitioner claims, changed with legislative action the settled and established construction which existed at the time of the execution and delivery of said deed, which is contrary to the Constitution of the United States; and that there is a Federal question raised by said record, in this, that the said decision of the circuit court of Cabell county, which undertakes to deprive your petitioner of his property, is without due process of law, retroactive in its effect, and unconstitutional."

Laidley moved to dismiss the writ of error for want of jurisdiction, and the motion to dismiss was argued with the merits of the case.

(June 3, 1895.)

Mr. Justice Gray, after stating the case, delivered the opinion of the court.

The questions upon the merits of this case, discussed at length by counsel, were whether the supreme court of appeals of West Virginia rightly construed the provision of the code of that State of 1868, which was, and was admitted to be, in all material respects, a re-enactment of the corresponding provision of the Code of Virginia of 1860, prescribing the form of acknowledgment by a married woman of a deed of real estate, and whether the court below have — a construction of that provision less favorable to the validity of such a deed than had been given to it by its own earlier decisions, and by the highest court of Virginia before the creation of the State of West Virginia. Those questions are not free from difficulty, and this court, before undertaking to pass upon them, must be
500 satisfied that it has jurisdiction to do so.

The grounds relied on for invoking the appellate jurisdiction of this court are in substance that by the decision of the supreme court of appeals of West Virginia, without any legislative action, the obligation of the contract contained in the deed from Mr. and Mrs. Pennybacker to Huntington, the grantor of the plaintiff in

error, has been impaired, and the plaintiff in error has been deprived of its property without due process of law.

Assuming without deciding that these grounds were sufficiently and seasonably taken in the courts of West Virginia, we are of opinion that they present no Federal question.

In order to come within the provision of the Constitution of the United States which declares that no State shall pass any law impairing the obligation of contracts, not only must the obligation of a contract have been impaired, but it must have been impaired by some act of the legislative power of the State and not by a decision of its judicial department only.

The appellate jurisdiction of this court upon writ of error to a State court, on the ground that the obligation of a contract has been impaired, can be invoked only when an act of the legislature alleged to be repugnant to the Constitution of the United States has been decided by the State court to be valid, and not when an act admitted to be valid has been misconstrued by the court. The statute of West Virginia is admitted to have been valid, whether it did or did not apply to the deed in question, and it necessarily follows that the question submitted to and decided by the State court was one of construction only and not of validity. If this court were to assume jurisdiction of this case, the question submitted for its decision would be, not whether the statute was repugnant to the Con-
501 stitution of the United States, but whether the highest court of the State has erred in its construction of the statute. As was said by this court, speaking by Mr. Justice Grier, in such a case as long ago as 1847, "It is the peculiar province and privilege of the State courts to construe their own statutes, and it is no part of the functions of this court to review their decisions or assume jurisdiction over them on the pretense that their judgments have impaired the obligation of contracts. The power delegated to us is for the restraint of unconstitutional legislation by the States and not for the correction of alleged errors committed by their judiciary." Commercial Bank *v.* Buckingham, 5 How., 317, 343; Lawler *v.* Walker, 14 How., 149, 154.

It was said by Mr. Justice Miller in delivering a later judgment of this court: "We are not authorized by the judiciary act to review the judgments of the State courts because their judgments refuse to give effect to valid contracts or because those judgments in their effect impair the obligation of contracts. If we did, every case decided in a State could be brought here, where the party setting up a contract alleged that the court had taken a different view of its obligation to that which he held." Knox *v.* Exchange Bank, 12 Wall., 379, 383.

The same doctrine was stated by Mr. Justice Harlan, speaking for this court, as follows: "The State court may erroneously determine questions arising under a contract which constitutes the basis of the suit before it. It may hold a contract void which, in our opinion, is valid. It may adjudge a contract to be valid which, in our opinion, is void, or its interpretation of the contract may, in our opinion, be radically wrong, but in neither of such cases would the

judgment be reviewable by this court under the clause of the Constitution protecting the obligation of contracts against im-
502 pairment by State legislation and under the existing statutes defining and regulating its jurisdiction unless that judgment in terms or by its necessary operation gives effect to some provision of the State constitution or some legislative enactment of the State which is claimed by the unsuccessful party to impair the obligation of the particular contract in question." Lehigh Water Co. *v.* Easton, 121 U. S., 388, 392.

Many other decisions of this court to the same effect are cited in that case. See also New Orleans Water Works *v.* Louisiana Sugar Co., 125 U. S., 18, 30; St. Paul, &c., Railway *v.* Todd County, 142 U. S., 282; Brown *v.* Smart, 145 U. S., 454; Wood *v.* Brady, 150 U. S., 18.

The decisions cited by the plaintiff in error to support the jurisdiction of this court in the case at bar were either cases in which the writ of error was upon a judgment of a State court, which gave effect to a statute alleged to impair the obligation of a contract made before any such statute existed, as in Louisiana *v.* Pilsbury, 105 U. S., 278; in Chicago Ins. Co. *v.* Needles, 113 U. S., 574, and in Mobile & Ohio Railroad *v.* Tennessee, 153 U. S., 486, or else the writ of error was to a circuit court of the United States, bringing to this court the whole case, including the question how far the courts of the United States should follow the decisions of the highest court of the State, as in Gelpcke *v.* Dubuque, 1 Wall., 175, 205; Olcott *v.* Supervisors, 16 Wall., 678, 690; Douglass *v.* Pike County, 101 U. S., 677, 686; Anderson *v.* Santa Anna, 116 U. S., 356, 361, and other cases cited in Louisiana *v.* Pilsbury, 105 U. S., 278, 295.

The distinction as to the authority of this court between writs of error to a court of the United States and writs of error to the highest court of a State is well illustrated by two of the earliest cases relating to municipal bonds, in both of which the opinion was delivered by Mr. Justice Swayne, and in each of which the
503 question presented was whether the constitution of the State of Iowa permitted the legislature to authorize municipal corporations to issue bonds in aid of the construction of a railroad. The supreme court of the State by decisions made before the bonds in question were issued had held that it did, but by decisions made after they had been issued held that it did not. A judgment of the district court of the United States for the district of Iowa, following the later decisions of the State court, was reviewed on the merits and reversed by this court for misconstruction of the constitution of Iowa. Gelpcke *v.* Dubuque, 1 Wall., 175, 206. But a writ of error to review one of those decisions of the supreme court of Iowa was dismissed for want of jurisdiction, because, admitting the constitution of the State to be a law of the State within the meaning of the provision of the Constitution of the United States forbidding a State to pass any law impairing the obligation of contracts, the only question was of its construction by the State court. Railroad Co. *v.* McClure, 10 Wall., 511, 515.

When the parties have been fully heard in the regular course of

judicial proceedings an erroneous decision of a State court does not deprive the unsuccessful party of his property without due process of law, within the fourteenth amendment of the Constitution of the United States. Walker *v.* Sauvinet, 92 U. S., 90; Head *v.* Amoskeag Co., 113 U. S., 9, 26; Morley *v.* Lake Shore Railroad, 146 U. S., 162, 171; Bergemann *v.* Backer, 157 U. S., 655.

This court therefore has no authority to decide the main questions argued at the bar, whether the decision of the supreme court of appeals of West Virginia in effect and erroneously overruled the prior decisions of that court and of the supreme court of appeals of Virginia before West Virginia became a separate State, and
504 the writ of error must be dismissed for want of jurisdiction.

Mr. Justice Field dissented.

True copy.
Test:
[SEAL.]

JAMES H. McKENNEY,
Clerk Supreme Court U. S.

EXHIBIT B 2 WITH PLEA AND ANSWER.

(The above-mentioned exhibit is not now found among the papers of my said office.—Clerk.)

505 EXHIBIT NO. 1 WITH PLEA AND ANSWER.

(Filed Feb'y 26, 1896.)

(The exhibit above referred to is not now found among the papers of this office.—Clerk.)

EXHIBIT NO. 2 WITH PLEA AND ANSWER.

(Filed Feb'y 26, 1896.)

STATE OF WEST VIRGINIA:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890.

JOHN B. LAIDLEY
vs.
R. T. HARVEY. } In Ejectment.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed his declaration and notice in ejectment against the defendant, which, together with the sheriff's return and rules thereon endorsed, are in the words and figures following, to wit:

Declaration.

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

John B. Laidley, plaintiff, complains of R. T. Harvey, defendant, of a plea of trespass, for this, to wit: On the 1st day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east in part by Seventh street, formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows: Beginning at a stake, corner of lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake,
506 from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 2 poles and six links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 to a white oak among some rocks on a point, S. 70 W. 50 poles to a white oak and a black oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on the portion of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendants afterwards, to wit, on the first of March, 1882, entered into the same and unlawfully withholds from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000.00, and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

Notice.

To R. T. Harvey:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county, at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the term prescribed by law judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return.

I served the within declaration and notice upon R. T. Harvey by giving him a truse copy thereof on the 3rd day of November, 1883.

E. KYLE, *S. C. C.*,
By E. S. BUFFINGTON, *Dept.*

Rules Endorsed.

1883, November rules.

507 Declaration and notice filed and service proved by the sheriff's return thereon endorsed, and a rule is awarded the plaintiff against the defendant to appear and plead at the next rules.

1883, December rules.

The defendant failed to appear and plead. It is ordered that his default be entered and judgment be entered for the plaintiff.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1883, there was an order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
R. T. HARVEY. } In Ejectment.

The declaration and notice in this action having been regularly served upon the tenant of R. T. Harvey, viz., Jennie Pim, by consent of parties and on notice of R. T. Harvey, and it appearing to the court that Jennie Pim was at the institution of this action the tenant of R. T. Harvey, it is ordered that he be, and he is hereby, made defendant in this action in the place of his said lessee, and he thereupon for plea said that he is not guilty of unlawfully withholding the premises claimed by the plaintiff in the declaration; and the said defendant files at the time he pleads an account for improvements, and this action is continued generally.

And at another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 28th day of March, 1887, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
R. T. HARVEY. } In Ejectment.

The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same
508 is ordered to be removed to the circuit court of the county of Summers, to be tried and determined according to law.

And at another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. OF W. VA. } In Ejectment.

SAME
vs.
SAME. } In Ejectment.

SAME
vs.
GEORGE PEKO. } In Ejectment.

SAME
vs.
MICHAEL O'BRYEN. } In Ejectment.

SAME
vs.
S. R. HALL. } In Ejectment.

SAME
vs.
JACKSON JASPER ET AL. } In Ejectment.

SAME
vs.
CATHERINE KNEFF. } In Ejectment.

SAME
vs.
A. L. WILLIAMS. } In Ejectment.

SAME
vs.
WILLIAM DUSTER. } In Ejectment.

SAME
vs.
S. F. JOBE. } In Ejectment.

SAME *vs.* ALBERT NAPIER.	In Ejectment.
SAME *vs.* ROB'T WOODSEN ET AL.	In Ejectment.
SAME *vs.* J. M. NOBLE ET AL.	In Ejectment.
SAME *vs.* S. A. REMLEY.	In Ejectment.
SAME *vs.* C. F. REMLEY.	In Ejectment.
SAME *vs.* CLAY GREENWELL.	In Ejectment.
SAME *vs.* MARGARET SANDS.	In Ejectment.
SAME *vs.* S. J. LOVE ET AL.	In Ejectment.
SAME *vs.* S. J. LOVE ET AL.	In Ejectment.
SAME *vs.* E. T. MITCHELL.	In Ejectment.
SAME *vs.* R. T. HARVEY.	In Ejectment.

The foregoing nin-teen cases having been remanded to this court from the circuit court of Summers county, on motion of plaintiff the same are now docketed and continued until the next term of this court.

And at another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890, ther- was another
509 order made — entered in this cause, which *which* is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
R. T. HARVEY. } In Ejectment.

This day again came the parties, by their attorneys, and thereupon the defendant filed his claim for permanent improvements placed upon the land in controversy; and the plaintiff asked that the value of his estate in the premises, without the improvements, may also be ascertained, which is accordingly ordered.

Thereupon came a jury, to wit, B. F. Johnston, John A. Morris, Harrison Derton, William Cooper, E. H. Blankenship, J. A. Walkinshaw, T. J. Guinn, Chas. Collins, Jeremiah Ball, Rezin Swann, M. T. Blankenship, and John H. Williams, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein and a true verdict rendered according to the evidence; and the jury, having fully heard the evidence and arguments of counsel, retired to their room to consider of their verdict, and after some time returned into court and on their oaths do say:

"We, the jury, find for the plaintiff, John B. Laidley, the following-described parcel of land, being a part of the land in the declaration mentioned, to wit: All that certain lot of land situate on the south side of Second avenue between Sixth and Seventh streets, in the city of Huntington, and designated on a certain map of said city made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county on the 6th day of December, 1871, and designated thereon as lot No. four, in block number sixty-seven, being 30 feet front by 140 deep, and that the plaintiff has an estate in fee-simple therein. We further find that the value of the plaintiff's estate in the premises without the improvements is $400.00; also, after setting off the amount allowed the defendant for improvements, we find for the defendant the sum of $1,000.00."

And thereupon the said plaintiff, by his attorney, elected to relinquish his estate in the premises to the defendant at the
510 value so ascertained. It is therefore considered by the court that the said defendant henceforth hold all the estate that the plaintiff had in said premises above described at the commencement of this action, provided he pay therefor the sum of $450.00, the value of said estate in manner aforesaid assessed, with interest thereon from this date. The said sum, with interest, shall be paid to the said plaintiff on or before the first day of the next term of this court; and if not so paid within said time, then the court reserves the right to order a sale of said premises to enforce said payment. It is further considered by the court that the plaintiff recover against the said defendant his costs about the prosecution of his suit in that behalf expended, including $5.00 allowed by statute.

And at another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 15th day of December, 1890, there was another —

made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs. } In Ejectment.
R. T. HARVEY.

This day came again the parties, by their attorneys, and the defendant, not having paid the sum of $450.00, as adjudged against him at the last term of this court, nor any part thereof, nor the costs of thos action: therefore, on motion of the plaintiff, by his attorney, it is considered by the court that the said real estate, with its appurtenances, be sold at public auction, to the highest bidder, at the front door of the court-house, on the terms of one-half cash in hand on day of sale and the residue thereof, with interest, in six months, the purchaser giving his note for the deferred payment, with good personal security, and the legal title to said land retained till the same is paid as further security.

And John H. Holt and C. W. Campbell are hereby appointed commissioners, with directions and power to carry out this order by making said sale; but before acting under this order they
511 shall give bond before the clerk of this court in the penalty of $450.00, with good security, to be approved by said clerk, with condition as prescribed by law. They shall give at least four weeks' notice of the time, place, manner, and terms of said sale by publication thereof in the Huntington Advertiser, a weekly newspaper printed in this county, and posting a copy of such notice of the front door of the court-house of this county for at least twenty days before the day of sale, and they shall report their action under this order to this court for approval or rejection.

STATE OF WEST VIRGINIA, } *To wit:*
County of Cabell, }

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings made and had in a cause lately determined in said circuit court, wherein John B. Laidley was plaintiff and R. T. Harvey was defendant.

Given under my hand this 21st day of April, 1896.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

EXHIBIT NO. 3 WITH PLEA AND ANSWER.

(Filed Feb'y 26, 1896.)

STATE OF W. VA.:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890.

JOHN B. LAIDLEY
vs.
JACKSON JASPER ET AL. } In Ejectment.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed his declaration and notice against the defendant; which declaration, notice, and the sheriff's return and rules thereon endorsed are in the words and figures following, to wit:

512 *Declaration.*

STATE OF WEST VIRGINIA:

Circuit Court of Cabell County.

John B. Laidley, plaintiff, complains of Jackson Jasper and James Jasper, defendants, of a ple- of trespass, for this, to wit: On the first day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east in part by Seventh street, formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows: Beginning at a stake, corner of lot No. 3 on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point south 70 W. 50 poles to a black oak and a white oak on a point 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two b*u*rches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county entered at the November term, 1862, and the March term, 1863, on the par-

tition of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendants afterwards, to wit, on the 1st of March, 1882, entered into the same and unlawfully with-lds from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000.00, and therefore he *begins* his suit, &c.

513 *Notice.*

To Jackson Jasper and James Jasper:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return on Declaration.

I served the within declaration and notice by giving a true copy to Jackson Jasper and James Jasper the 3rd day of November, 1883.

E. KYLE, *S. C. C.*,
By E. BUFFINGTON, *Dept.*

Rules Indorsed.

1883, November rules.—Declaration and notice filed and service proved by the return of the sheriff thereon indorsed, and a rule is awarded the plaintiff against the defendants to appear and plead at the next rules.

1883, December rules.—The defendant failing to appear and plead, it is ordered that his default be entered, and that judgment be entered for the plaintiff.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 2nd day of Jan., 1884, there was an order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
JACKSON JASPER and JAMES JASPER. } In Ejectment.

This day the defendants, Jackson Jasper and James Jasper, by their attorney, Simms and Enslow, — and moved to quash the notice in this action and demurred to the declaration, in which the plaintiff joined; and for further plea says that the defendants are

not guilty of unlawfully withholding the premises claimed
514 by the plaintiff in his declaration, and the plaintiff replied generally, and the defendants are allowed to file their disclaimer at the next term to a part of the said premises.

And at another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1885, there was another order made and entered in *their* cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
JACKSON JASPER and JAMES JASPER. } In Ejectment.

The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is order- to be and is removed to the circuit court of the county of Summers, to be tried and determined according to law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in this cause, which *are* in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. } In Ejectment.

SAME
vs.
SAME. } In Ejectment.

SAME
vs.
GEORGE PEKO. } In Ejectment.

JOHN B. LAIDLEY
vs.
MICHAEL O'BRIEN. } In Ejectment.

SAME
vs.
S. R. HALL. } In Ejectment.

SAME
vs.
JACKSON JASPER ET AL. } In Ejectment.

SAME
vs.
CATHERINE KNEFF. } In Ejectment.

	SAME *vs.* A. L. WILLIAMS.	In Ejectment.
	SAME *vs.* WILLIAM DUSTON.	In Ejectment.
	SAME *vs.* S. F. JOBE.	In Ejectment.
	SAME *vs.* ALBERT NAPIER ET AL.	In Ejectment.
	SAME *vs.* ROB'T WOODSON ET AL.	In Ejectment.
	SAME *vs.* J. M. NOBLE ET AL.	In Ejectment.
	SAME *vs.* S. A. REMLEY.	In Ejectment.
515	SAME *vs.* C. F. REMLEY.	In Ejectment.
	SAME *vs.* CLAY GREENWELL.	In Ejectment.
	SAME *vs.* MARGARET SANDS.	In Ejectment.
	SAME *vs.* S. J. LOVE ET AL.	In Ejectment.
	SAME *vs.* E. T. MITCHEL.	In Ejectment.
	SAME *vs.* R. T. HARVEY.	In Ejectment.

The foregoing nineteen cases having been remanded to this court from the circuit court of Summers county, on motion of plaintiff the same are now docketed and continued until the next term of this court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890, there was another order made and entered in the cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
JACKSON JASPER and JAMES JASPER. } In Ejectment.

This day came again the parties, by their attorneys, and thereupon the defendant- filed *his* claim for permanent improvements placed upon the land in controversy, and the plaintiff asked that the value of his estate in the premises without the improvements may also be ascertained, which is accordingly ordered. Thereup- came a jury, to wit, B. F. Johnson, John A. Morris, Harrison Deston, William Cooper, E. G. Blankenship, J. A. Walkinshaw, T. J. Guinn, Chas. Collins, Jeremiah Ball, Rezin Swann, M. T. Blankenship, and John H. Williams, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein and a true verdict rendered according to the evidence, and after hearing the evidence and argument of counsel retired to consider of their verdict, and after some time returned into court and upon their oaths say:

We, the jury, find for the plaintiff the following-described parcel of land, being a part of the land in the declaration mentioned, to wit: All that certain piece and parcel of land situated on the south side of 3rd avenue between 6th and 7th streets, in the city of
516 Huntington, and designated on a map of said city made by Rufus Cook, surveyor, a lithographed copy of which was filed in the recorder's office of Cabell county on the 6th day of December, 1871, as lot No. 5, in block No. 68, being 30 feet front by 160 feet deep to the alley, and that the plaintiff hath an estate in fee-simple therein. We further find that the value of the plaintiff's estate in said premises without the improvements is $450.00, and after setting off the amount allowed the plaintiff for the annual value of said premises against the amount allowed the defendants for improvements we find for the defendants the balance of $1,500.00.

And thereupon the said plaintiff, by his attorney, elected to relinquish his estate in the premises to the defendant- at the value so ascertained. It is therefore considered by the court that the said defendant- henceforth hold all the estate that the plaintiff had in said premises above described at the commencement of this action, provided *he* pay therefor the sum of $450.00, the value of said estate in manner aforesaid assessed, with interest thereon from that date. The said sum, with interest, shall be paid to the said plaintiff on or before the first day of the next term of this court, and if not so paid within said time, then the court reserves the right to order a sale of said premises to enforce said judgment. It is further considered by the court that the plaintiff recover against said defendants his costs about the prosecution of his suit in this behalf expended, including five dollars allowed by law.

STATE OF WEST VIRGINIA, *County of Cabell,* } *To wit:*

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings made and had in a cause lately determined in said circuit court, where John B. Laidley was plaintiff and Jackson Jasper *et al. was* defendant-.

Given under my hand this 21st day of April, 1891.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

517 EXHIBIT NO. 4 WITH PLEA AND ANSWER.

(Filed Feb'y 26, 1896.)

STATE OF WEST VIRGINIA:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the — day of ——, 1890.

JOHN B. LAIDLEY
vs.
A. L. WILLIAMS. } In Ejectment.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed his declaration and notice against the defendant, which, together with the sheriff's return and the rules thereon endorsed, are in the words and figures following, to wit:

Declaration.

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

John B. Laidley, plaintiff, complains of A. L. Williams, defendant, of a plea of trespass, for this: that, to wit, on the 1st day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east in part by Seventh street, formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows: Beginning at a stake, corner of lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 3 poles and six links; thence S. 13 E. 120 poles to 2 white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, south 70 W. 50 poles to a

black oak and a white oak on a point, S. 11½ W. 120 poles to 2 white oaks on a hill, S. 54 E. 62 poles to 2 black oaks, N.
518 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendants afterwards, to wit, on the 1st of March, 1882, entered into the same and unlawfully withheld from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000.00, and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

Notice.

To A. L. Williams:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law, judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return.

I served the within declaration and notice by giving a true copy thereof to A. L. Williams on the 3rd day of November, 1883.

E. KYLE, *S. C. C.*,
By E. S. BUFFINGTON, *Dep'ty.*

Rules Endorsed.

1883, November rules.—Declaration and notice filed and service proved by the return of the sheriff thereon endorsed, and a rule is awarded the plaintiff against the defendant to appear and plead at the next rules.

519 1883, December rules.—The defendant failing to appear and plead, it is ordered that his default be entered and judgment entered for the plaintiff.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 2nd day of January, 1884, there was an order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
A. L. WILLIAMS. } In Ejectment.

This day the defendant, A. L. Williams, appeared, by his attorneys, Simms & Enslow, and moved to quash the notice in this action, and demurred to the declaration, in which the plaintiff joins, and for further plea says that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff in his declaration, and the plaintiff replies generally, and the defendant is allowed to file his disclaimer at the next term to part of the premises.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1885, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
A. L. WILLIAMS. } In Ejectment.

The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is ordered to be and is removed to the circuit court of the county of Summers, there to be tried and determined according to law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in this cause, which is in the words and figures following, to wit:

520 JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. OF W. VA. } In Ejectment.

SAME
vs.
SAME. } In Ejectment.

SAME
vs.
GEORGE PEKO. } In Ejectment.

SAME
vs.
MICHAEL O'BRIEN. } In Ejectment.

SAME
vs.
S. R. HALL. } In Ejectment.

SAME *vs.* JASPER JACKSON ET AL.	In Ejectment.
SAME *vs.* CATHERINE KNEFF.	In Ejectment.
SAME *vs.* A. L. WILLIAMS.	In Ejectment.
SAME *vs.* WILLIAM DUSTER.	In Ejectment.
SAME *vs.* S. F. JOBE.	In Ejectment.
SAME *vs.* ALBERT NAPIER.	In Ejectment.
SAME *vs.* ROBERT WOODSON ET AL.	In Ejectment.
SAME *vs.* J. M. NOBLE ET AL.	In Ejectment.
SAME *vs.* S. A. REMLEY.	In Ejectment.
SAME *vs.* C. F. REMLEY.	In Ejectment.
SAME *vs.* CLAY GREENWELL.	In Ejectment.
SAME *vs.* MARGARET SANDS.	In Ejectment.
SAME *vs.* S. J. LOVE ET AL.	In Ejectment.
SAME *vs.* E. T. MITCHELL.	In Ejectment.

SAME
vs.
R. T. HARVEY. } In Ejectment.

The foregoing nin-teen cases having been remanded to this court from the circuit court of Summers county, on motion of plaintiff the same are now docketed and continued until the next term of this court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 13th day of May, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
A. L. WILLIAMS. } In Ejectment.

521 This day the defendany, by his attorneys, tendered an account showing the improvements made by him and those under whom he claims on the premises in the declaration mentioned, and the court permits said account to be filed subject to the objection of the plaintiff, such as may hereafter be made.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
A. L. WILLIAMS. } In Ejectment.

This day came again the parties, by their attorneys, and thereupon the defendant filed his claim for permanent improvements placed upon the land in controversy, and the plaintiff asked that the value of his estate in the premises without the improvements may also be ascertained, which is accordingly ordered. Thereupon came a jury, to wit, B. F. Johnston, John A. Morris, Harrison Derton, E. G. Blankenship, William Cooper, J. A. Walkinshaw, T. J. Guinn, Chas. Collins, Jeremiah Ball, Rezin Swann, M. T. Blankenship, and John H. Williams, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein and a true verdict rendered according to the evidence, and after hearing the evidence and arguments of counsel retired to their room to consider of their verdict, and after some time returned into court and on their oaths do say:

"We, the jury, find for the plaintiff the following-described parcel of land, being a part of the land in the declaration mentioned, to wit: All that certain parcel of land situate on the south side of Third avenue between Sixth and Seventh streets, in the city of

Huntington, and designated on a certain map of said city made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the recorder of Cabell county on the sixth day of
522 December, 1871, as lot fourteen (14), in block sixty-eight (68), being thirty (30) feet wide by — (160) feet deep to an alley, and that the plaintiff has an estate in fee-simple therein. We further find *find* that the value of the plaintiff's estate in said premises, eithout the improvements, is $750.00, and after setting off the amount allowed the plaintiff for the annual value of said premises against the amount allowed the defendant for improvements we find for the defendant the balance of $2,500.00."

And thereupon the said plaintiff, by his attorney, elected to relinquish his estate in the premises to the defendant at the value so ascertained. It is therefore considered by the court that the said defendant henceforth hold all the estate that the plaintiff had in said premises above described at the commencement of this action, provided he pay therefor the said sum of $750.00, the value of said estate in manner aforesaid assessed, with interest thereon from this date. The said sum, with interest, shall be paid to the said plaintiff on or before the first day of the next term of this court, and if not so paid within said time, then the court reserves the right to order a sale of said premises to enforce said payment. It is further considered by the court that the plaintiff recover against said defendant his costs by him about the prosecution of his suit in that behalf expended, including five dollars allowed by law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 15th day of December, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
A. L. WILLIAMS. } In Ejectment.

This day came again the parties, by their attorneys, and the defendant, not having paid the sum of $750.00 adjudged against him at the last term of this court, nor any part thereof, nor the
523 costs of this action; therefore, on motion of the plaintiff, by his attorney, it is considered by the court that the said real estate, being lot 14, block 68, with its appurtenances, be sold at public auction to the highest bidder, at the front door of the court-house, on the terms of one-half cash in hand on day of sale, and the residue thereof, with interest, in 6 months, the purchaser giving his note for the deferred payment, with good personal security, and the legal title to said land retained till the same is paid as further security; and John H. Holt and C. W. Campbell are hereby appointed commissioners, with direction and power to carry out this order by making said sale, but before acting they shall give bond before the clerk of this court in the penalty of $750.00, with good security, to be approved by the clerk of this court, with conditions

as prescribed by law. They shall give at least four weeks' notice of the time, place, manner, and terms of said sale by publication thereof in the Huntington Advertiser, a weekly newspaper printed in this county, and posting a copy of such notice on the front door of the court-house of this county for at least twenty days prior to day of sale, and they shall report their action under this order for approval or rejection.

STATE OF WEST VIRGINIA, *County of Cabell,* } *To wit:*

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings made and had in a cause lately determined in said circuit court, wherein John B. Laidley was plaintiff and A. L. Williams defendant.

Given under my hand this 21st day of April, 1891.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

EXHIBIT NO. 5 WITH PLEA AND ANSWER.

(Filed Feb'y 26, 1896.)

524 STATE OF W. VA..

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890.

JOHN B. LAIDLEY
vs.
S. R. HALL. } In Ejectment.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed his declaration and notice against the defendant; which declaration, notice, and the sheriff's return and rules thereon indorsed are in the words and figures following, to wit:

Declaration.

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

John B. Laidley, plaintiff, complains of S. R. Hall, defendant, of a plea of trespass, for this: that, to wit, on the first day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a tract of land situated, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by

the Ohio river, on the east in part by Seventh street, formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows:

Beginning at a stake, corner of lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, south 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two
525 beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendants afterwards, to wit, on the first of March, 1882, entered into the same and unlawfully withhold from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000.00, and therefore he brings his suit, &c.

Notice.

To S. R. Hall:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law, judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return on Declaration.

I served the within notice and declaration on S. R. Hall by giving a true copy thereof, on the 3rd day of November, 1883, to —— Hall, wife of said S. R. Hall, and explaining the purport thereof to her, at the usual place of abode of said S. R. Hall, she being a member of his family and over the age of 16 years and he being absent from the house.

E. KYLE, *S. C. C.*,
By E. S. BUFFINGTON, *Dep'ty.*

Rules Indorsed.

1883, November rules.—Declaration and bill filed and service proved by the return of the sheriff thereon indorsed, and a rule is awarded the plaintiff against the defendant to appear and plead at next rules.

1883, December rules.—The defendant failing to appear
526 and plead, it is ordered that his default be entered and judgment entered for the plaintiff.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 2nd day of Jan'y, 1884, there was an order made and entered in the cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
S. R. HALL. } In Ejectment.

This day the defendant, S. R. Hall, appeared, by his attorneys, Simms and Enslow, and moved to quash the notice in this action and demurrer to the declaration, in which the plaintiff joins, and for further plea says that the defendant is not guilty of unlawful withholding the premises claimed by the plaintiff in his declaration, and the plaintiff replied generally, and the defendant is allowed to file his disclaimer at the next term to a part of the said premises.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1885, there was another order made and entered in the cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
S. R. HALL. } In Ejectment.

The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is ordered to be and is removed to the circuit court of the county of Summers, to be tried and determined according to law:

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in this cause, which is in the words and figures following, to wit:

527	JOHN B. LAIDLEY *vs.* CENTRAL LAND CO.	In Ejectment.
	SAME *vs.* SAME.	In Ejectment.
	SAME *vs.* ——— ———.	In Ejectment.
	SAME *vs.* GEO. PEKO.	In Ejectment.
	SAME *vs.* MICHAEL O'BRIEN.	In Ejectment.
	SAME *vs.* S. R. HALL.	In Ejectment.
	SAME *vs.* JACKSON JASPER ET AL.	In Ejectment.
	SAME *vs.* CATHERINE KNIEFF.	In Ejectment.
	SAME *vs.* A. L. WILLIAMS.	In Ejectment.
	SAME *vs.* WILLIAM DUSTER.	In Ejectment.
	SAME *vs.* S. F. JOBE.	In Ejectment.
	SAME *vs.* ALBERT NAPIER.	In Ejectment.
	SAME *vs.* ROB'T WOODSON ET AL.	In Ejectment.
	SAME *vs.* J. N. NOBLE ET AL.	In Ejectment.

SAME *vs.* S. A. REMLEY.	In Ejectment.
SAME *vs.* C. F. REMLEY.	In Ejectment.
SAME *vs.* CLAY GREENWELL.	In Ejectment.
SAME *vs.* MARGARET SANDS.	In Ejectment.
SAME *vs.* S. J. LOVE ET AL.	In Ejectment.
SAME *vs.* E. T. MITCHELL.	In Ejectment.
SAME *vs.* R. T. HARVEY.	In Ejectment.

The foregoing nin-teen cases having been remanded to this court from the circuit court of Summers county, on motion of plaintiff the same are now docketed and continued until the next term of this court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY *vs.* S. R. HALL.	In Ejectment.

528 This day came again the parties, by their attorneys, and thereupon the defendant filed his claim for permanent improvements placed upon the land in controversy, and the plaintiff asked that the value of his estate in the premises without the improvements may also be ascertained, which is accordingly ordered. Thereupon came a jury, to wit, B. F. Johnston, John A. Morris, Harrison Deston, William Cooper, E. G. Blankenship, J. A. Walkinshaw, T. J. Guinn, Chas. Collins, Jeremiah Ball, Rezin Swann, M. T. Blankenship, and John H. Williams, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein and a true verdict *verdict*

render according to *to* the evidence, and after hearing the evidence and arguments of counsel retired to consider of their verdict, and after some time returned into court and upon their oath say:

"We, the jury, find for the plaintiff the following-described parcel of land, being a part of the land in the declaration mentioned, to wit, all that certain piece of land situated on the south side of Third avenue between Sixth and Seventh streets, in the city of Huntington, and designated on a certain map of said city made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the recorder of Cabell county on the 6th day of December, 1871, as lot No. thirteen (13), in block No. sixty-eight (68), and is thirty feet wide by 160 feet deep, and that the plaintiff hath an estate in fee-simple therein. We further find that the value of the plaintiff's estate in said premises without the improvements is $600.00. After setting off the amount allowed the plaintiff for the annual value of said premises against the amount allowed the defendant for improvements, we find for the defendant the balance of $2,500.00."

And thereupon the said plaintiff, by his attorney, elected to relinquish his estate in the premises to the defendant at the value so ascertained. It is therefore considered by the court that the said defendant henceforth hold all the estate that the plaintiff had in said premises above described at the commencement of this action, provided he pay therefor the said sum of $600.00, the value of said estate in manner aforesaid assessed, with interest thereon from this date. The said sum, with interest, shall
529 be paid to the said plaintiff on or before the first day of the next term of this court, and if not so paid within said time, then the court reserves the right to order a sale of said premises to enforce said payment. It is further considered by the court that the plaintiff recover against said defendant his costs about the prosecution of his suit in that behalf expended, including five dollars allowed by law.

STATE OF WEST VIRGINIA, }
County of Cabell, } *To wit:*

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings made and had in a cause lately determined in said circuit court, wherein John B. Laidley was plaintiff and S. R. Hall was defendant.

Given under my hand this 21st day of April, 1891.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

EXHIBIT NO. 6 WITH PLEA AND ANSWER.

(Filed Feb'y 26, 1896.)

STATE OF WEST VIRGINIA:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890.

JOHN B. LAIDLEY *vs.* C. F. REMLEY. } In Ejectment.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed his declaration and notice against the defendant, which, together with the return and rules thereon endorsed, are in the words and figures following, to wit:

Declaration.

530 STATE OF WEST VIRGINIA, *County of Cabell,* } *To wit:*

John B. Laidley, plaintiff, complains of C. F. Remley, defendant, of a plea of trespass, for this: that, to wit, on the 1st day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east in part by Seventh street, formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows: Beginning at a stake, corner of lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 3 poles and six links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by John

Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the *the* plaintiff; and, being so possessed of the said tract of land, the defendant afterwards, to wit, on the 1st of March, 18–2, entered into the same and unlawfully withholds from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000.00, and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

531 *Notice.*

To C. F. Remley:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law, judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return.

I served the within notice and declaration by giving a true copy thereof to C. F. Remley on the 3rd day of November, 1883.

E. KYLE, *S. C. C.*,
By E. S. BUFFINGTON, *Dep-ty.*

Rules Endorsed.

1883, November rules.—Declaration and notice filed and service proved by return of sheriff as to C. F. Remley, and a rule is awarded the plaintiff against the defendant Remley to appear and plead at the next rules.

1883, December rules.—The defendant failed to appear and plead. Judgment is given against him.

And on another day, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 2nd day of January, 1884, there was an order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
C. F. REMLEY. } In Ejectment.

This day the defendant, C. F. Remley, appeared, by Simms and Enslow, his attorneys, and moved to quash the notice in this action and demurred to the declaration, in which the plaintiff joined, and for further plea says that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff in his dec-
532 laration, and the plaintiff replies generally, and the defendant is allowed to file his disclaimer at the next term to a part of the premises.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1885, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY *vs.* C. F. REMLEY. } In Ejectment.

The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is ordered to be and is removed to the circuit court of Summers county, there to be tried and determined according to law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY *vs.* CENTRAL LAND CO. OF W. VA. } In Ejectment.

SAME *vs.* SAME. } In Ejectment.

SAME *vs.* GEO. PEKO. } In Ejectment.

SAME *vs.* MICHAEL O'BRIEN. } In Ejectment.

SAME *vs.* S. R. HALL. } In Ejectment.

SAME *vs.* JASPER JACKSON ET AL. } In Ejectment.

SAME *vs.* CATHERINE KNEFF. } In Ejectment.

SAME *vs.* A. L. WILLIAMS. } In Ejectment.

SAME *vs.* WILLIAM DUSTER. } In Ejectment.

SAME *vs.* S. F. JOBE.	In Ejectment.
SAME *vs.* ALBERT NAPIER.	In Ejectment.
SAME *vs.* ROBERT WOODSON ET AL.	In Ejectment.
SAME *vs.* J. M. NOBLE ET AL.	In Ejectment.
SAME *vs.* S. A. REMLEY.	In Ejectment.
SAME *vs.* C. F. REMLEY.	In Ejectment.
SAME *vs.* CLAY GREENWELL.	In Ejectment.
533 JOHN B. LAIDLEY *vs.* CENTRAL LAND CO. OF W. VA.	In Ejectment.
SAME *vs.* MARGARET SANDS.	In Ejectment.
SAME *vs.* S. J. LOVE ET AL.	In Ejectment.
SAME *vs.* E. T. MITCHELL.	In Ejectment.
SAME *vs.* R. T. HARVEY.	In Ejectment.

The foregoing nin-teen cases have been remanded to this court from the circuit court of Summers county. On motion of the plaintiff, the same are now docketed and continued until the next term of this court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890, there was another order

made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
S. A. REMLEY. } In Ejectment.

Consolidated.

This day came again the parties, by their attorneys, and thereupon the defendant filed his claim for permanent improvements placed upon the land in controversy, and the plaintiff asked that the value of his estate in the premises without the improvements may also be ascertained, which is accordingly ordered. Thereupon came a jury, to wit, B. F. Johnston, Jno. A. Morris, Harrison Derton, Wm. Cooper, E. G. Blankenship, J. A. Walkinshaw, T. J. Guinn, Chas. Collins, Jeremiah Ball, Rezin Swann, M. T. Blankenship, and John H. Williams, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein and a true verdict render according to the evidence, and after hearing the evidence and arguments of counsel retired to their room to consider of their verdict, and after some time returned into court and upon their oaths do say:

"We, the jury, find for the plaintiff, John B. Laidley, the following-described parcel of land, being a part of the land in the
534 declaration mentioned, to wit, all that certain lot of land situate on the south side of Third avenue between Sixth and Seventh streets, in the city of Huntington, and designated on a certain map of said city made by Rufus Cook, surveyor, a lithographic copy of which was filed in the recorder's office of Cabell county on the 6th day of December, 1871, and designated thereon as lot No. 12, in block No. 68, being 30 feet front by 160 feet deep, and that the plaintiff has an estate in fee-simple therein. We further find that the value of the plaintiff's estate in the premises without the improvements is $500.00; also, after setting off the amount allowed the plaintiff for the annual value of said premises against the amount allowed the defendant for improvements, we find for the defendants the sum of $1,500.00."

And thereupon the plaintiff, by his attorney, elected to relinquish his estate in the premises to the defendant at the value so ascertained. It is therefore considered by the court that the said defendant henceforth hold all the estate that the plaintiff had in said premises above described at the commencement of this action, provided he pay therefor the said sum of $500.00, the value of said estate in manner aforesaid assessed, with interest thereon from this date. The said sum, with interest, shall be paid to the plaintiff on or before the first day of the next term of this court, and if not so paid within said time, then the court reserves the right to order a sale of said premises to enforce said payment. It is further considered by the court that the plaintiff recover against said defendant his costs about the prosecution of his suit in that behalf expended, including $5.00 as allowed by law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 15th day of December, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
S. A. & C. F. REMLEY. } In Ejectment.

535 This day came again the parties, by their attorneys, and the defendants not having paid the sum of $500.00 adjudged against them at the last term of this court, nor any part thereof, nor the costs of this action: therefore, on motion of the plaintiff, by his attorney, it is considered by the court that the said real estate, being lot No. 12 of block No. 68, with its appurtenances, be sold at public auction to the highest bidder, at the front door of the court-house, on the terms of one-half of the purchase money cash in hand on the day of sale and the residue thereof, with interest, in six months, the purchaser giving his note for the deferred payment, with good personal security, and legal title to said land retained until the same is paid for further security.

And John H. Holt and C. W. Campbell are hereby appointed commissioners, with direction and power to carry out this order by making said sale, but before acting they shall give bond before the clerk of this court in the penalty of $500.00, with good security, to be approved by said clerk, with condition as prescribed by law. They shall give at least 4 weeks' notice of the time, place, manner, and terms of said sale by publication thereof in the Huntington Advertiser, a weekly newspaper printed in this county, for at least twenty days prior to day of sale, and they shall report their action under this order to this court for approval or rejection.

STATE OF WEST VIRGINIA, } *To wit:*
County of Cabell, }

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings made and had in a cause lately determined in said circuit court, wherein John B. Laidley was plaintiff and C. F. Remley was defendant.

Given under my hand this 21st day of April, 1891.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

536 EXHIBIT No. 7 WITH PLEA AND ANSWER.

(Filed Feb'y 26, 1896.)

STATE OF WEST VIRGINIA:

Pleas.

At a circuit court held for Cabell county, at the *the* court-house thereof, on the 10th day of September, 1890.

JOHN B. LAIDLEY
vs.
S. J. LOVE & ISADORE MYERS. } In Ejectment.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed two declarations and notices against the defendants, which, together with the rules and sheriff's returns thereon endorsed, are in the words and figures following, to wit:

1*st Declaration.*

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

John B. Laidley, plaintiff, complains of S. J. Love and Isadore Myers, defendants, of a plea of trespass, for this: that, to wit, on the 1st day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east in part by 7th street, formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows: Beginning at a stake, corner of lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks,
537 N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and con-

veyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendants afterwards, to wit, on the 1st of March, 1882, entered into the same and unlawfully withhold from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000.00, and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

Notice.

To S. J. Love and Isadore Myers:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return on 1st Declaration.

I served the within notice and declaration by giving a true copy thereof to Isa. Myers the 3rd day of November, 1883.

E. KYLE, *S. C. C.*,
By E. S. BUFFINGTON, *Dep-ty.*

2nd Declaration.

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

John B. Laidley, plaintiff, complains of S. J. Love and Isadore Myers, defendants, of a plea of trespass, for this: that, to wit,
538 on the 1st day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east in part by Seventh street, formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows: Beginning at a stake, corner lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links, N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles & 27 links, and another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W.

8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said land, the defendant afterwards, to wit on the 1st of March, 18–2, entered into the same and unlawfully withhold from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000.00, and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

Notice.

To S. J. Love and Isadore Myers:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in
539 November, 1883, and unless you appear and plead thereto within the time prescribed by law judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return on 2nd Declaration.

Executed Nov. 3, 1883, by delivering a true copy of the within declaration and notice to S. J. Love in my county.

E. KYLE, *S. C. C.*

Rules Endorsed.

1883, November rules.—Declaration and notice filed and service proved by the sheriff's return thereon endorsed, and rule is awarded the plaintiff against the defendants to appear and plead at the next rules.

1883, December rules.—The defendant failing to appear and plead, it is ordered that judgment be entered for the plaintiff.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 2nd day of January, 1884, there was an order made and entered in this cause which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs } In Ejectment.
S. J. LOVE and ISA. MYERS.

This day the defendants, Love & Myers, by their attorneys, moved the court to quash the notice in this action and the service thereof,

and demurred to the plaintiff's declaration, in which demurrer the plaintiff joins, and for a further plea say that the defendants are not guilty of unlawfully withholding the premises claimed by the plaintiff in his declaration, and the plaintiff replies generally, and the defendants are allowed to file their disclaimer at the next term to a part of the said premises.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 28th day of March, 1887, there was another order made and entered in this cause, which is in the words and figures following, to wit:

540 JOHN B. LAIDLEY *vs.* S. J. LOVE ET AL. } In Ejectment.

The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is ordered to be removed to the circuit court of Summers county, to be tried and determined according to law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was an order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY *vs.* CENTRAL LAND CO. OF W. VA. } In Ejectment.

SAME *vs.* SAME. } In Ejectment.

SAME *vs.* GEORGE PEKO. } In Ejectment.

SAME *vs.* MICHAEL O'BRIEN. } In Ejectment.

SAME *vs.* S. R. HALL. } In Ejectment.

SAME *vs.* JASPER JACKSON ET AL. } In Ejectment.

SAME *vs.* CATHERINE KNEFF. } In Ejectment.

SAME *vs.* A. L. WILLIAMS.	In Ejectment.
SAME *vs.* WILLIAM DUSTER.	In Ejectment.
SAME *vs.* S. F. JOBE.	In Ejectment.
SAME *vs.* ALBERT NAPIER.	In Ejectment.
SAME *vs.* ROB'T WOODSON ET AL.	In Ejectment.
SAME *vs.* J. M. NOBLE ET AL.	In Ejectment.
SAME *vs.* S. A. REMLEY.	In Ejectment.
SAME *vs.* C. F. REMLEY.	In Ejectment.
SAME *vs.* CLAY GREENWELL.	In Ejectment.
SAME *vs.* MARGARET SANDS.	In Ejectment.
SAME *vs.* S. J. LOVE ET AL.	In Ejectment.
SAME *vs.* E. T. MITCHELL.	In Ejectment.
SAME *vs.* R. T. HARVEY.	In Ejectment.

541 The foregoing nin-teen cases having been remanded to this court from the circuit court of Summers county, on motion of plaintiff the same are now docketed and continued until the next term of this court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890, there was an order made entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
S. J. LOVE & ISADORE MYERS. } In Ejectment.

This day came again the parties, by their attorneys, and thereupon the defendant filed *his* claim for permanent improvements placed upon the land in controversy; and the plaintiff *and the plaintiff* asked that the value of his estate in the premises without the improvements may also be ascertained, which is accordingly ordered. Thereupon came a jury, to wit, B. F. Johnston, John A. Morris, Harrison Derton, Wm. Cooper, E. G. Blankenship, J. A. Walkinshaw, T. J. Guinn, Chas. Collins, Jeremiah Ball, Rezin Swann, M. T. Blankenship, and Jno. H. Williams, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein and a true verdict render according to the evidence, and after hearing the evidence and the arguments of counsel retired to consider of their verdict, and after some time returned into court and upon their oaths do say: "We, the jury, find for the plaintiff the following-described parcels of land in the declaration mentioned, to wit: All those certain parcels of land situate on the south side of Second avenue between Sixth and Seventh streets, in the city of Huntington, and designated on a certain map of said city made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the recorder of Cabell county on the sixth day of December, 1871, as lot No. eight (8) and nine (9), in block No. sixt*h*-seven (67), being each thirty (30) feet wide by one hun-
542 dred and forty feet deep to an alley, and that the plaintiff hath an estate in fee-simple therein.

We further find that the value of the plaintiff's estate in said premises without the improvements is $900.00, and that after setting off the amount allowed the plaintiff for the annual value of said premises against the amount allowed the defendant S. J. Love for improvements, we find for said S. J. Love the balance of $1,500.00."

And thereupon the said plaintiff, by his attorney, elected to relinquish his estate in the premises to the defendant at the value as ascertained.

It is therefore considered by the court *the* the defendant henceforth hold all the estate that the plaintiff had in said premises above described at the commencement *at* this action, provided he pay therefor the said sum of $900.00, the value of said estate in manner aforesaid assessed, with interest thereon from this date. The said sum, with interest, shall be paid to the plaintiff on or before the first day of the next term of this court; and if not so paid within said time, then the court reserves the right to order a sale of said premises to enforce said payment. It is further considered by the court that the plaintiff recover against the said defendant his costs by him

about the prosecution of his suit in that behalf expended, including $5.00 allowed by statute.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 15th day of December, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY *vs.* S. J. LOVE ET AL. } In Ejectment.

This day came again the parties, by their attorneys, and the defendants, not having paid the sum of *of* $900.00, adjudged against them at the last term of this court, nor any part thereof, nor
543 the costs of this action: therefore, on motion of the plaintiff, by his attorney, it is considered by the court that the said real estate, lots 8 & 9 of block 67, with its appurtenances, be sold at public auction, to the highest bidder, at the front door of the court-house, on the terms of one-half of the purchase-money cash in hand on day of sale and the residue thereof, with interest, in six months, the purchaser giving his note for the deferred payments, with good personal security, and the legal title to said land retained until the same is paid as further security; and John H. Holt and C. W. Campbell are hereby appointed commissioners, with direction and power to carry out this order by making said sale; but before acting they shall give bond before the clerk of this court in the penalty of $900.00, with good security, to be approved by said clerk, with conditions as prescribed by law. They shall give at least four weeks' notice of the time, place, manner, and terms of said sale by publication thereof in the Huntington Advertiser, a weekly newspaper printed in this county, and posting a copy of such notice on the front door of the court-house of this county for at least 20 days prior to day of sale, and they shall report their actions under this decree to this court for approval or rejection.

STATE OF WEST VIRGINIA, *County of Cabell,* } *To wit:*

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings made and had in a cause lately determined in said circuit court, wherein John B Laidley was plaintiff and S. J. Love and Isadore Mayer *was* defendant-.

Given under my hand this 21st day of April, 1891.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

EXHIBIT No. 8 WITH PLEA AND ANSWER.

(Filed Feb'y 26, 1896.)

STATE OF WEST VIRGINIA:

Pleas.

544 At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890.

JOHN B. LAIDLEY
vs.
MICHAEL O'BRIEN. } In Ejectment.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed his declaration and notice against the defendant, which, together with the sheriff's return and the rules thereon endorsed, are in the words and figures following, to wit:

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

John B. Laidley, plaintiff, complains of Michael O'Brien, defendant, of a plea of trespass, for this: that, to wit, on the 1st day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the city *city* of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east by Seventh street (in part), formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows: Beginning at a stake, corner of lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles & 27 links, and another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the south-
east corner of the Brown tract; thence N. 19 W. 398 poles to a
545 stake on the Ohio river, S. 73 W. 47 poles & 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by deed from John Laidley, special commissioner, and by her sold

and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendant afterwards, to wit, on the 1st day of March, 1882, entered into the same and unlawfully withholds from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000.00, and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

Notice.

To Michael O'Brien:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return.

I served the within declaration and notice on the 3rd day of November, 1883, by giving a true copy thereof to —— O'Brien, mother of Michael O'Brien, at his usual place of abode, and explaining the purport thereof to her, she being over the age of 16 years and he being absent from home.

E. S. BUFFINGTON, *Dep-ty*,
For E. KYLE, *S. C. C.*

Rules Endorsed.

1883, November rules.—Declaration and notice filed and service proved by the return of the sheriff thereon endorsed, and a rule is awarded the plaintiff against the defendant to appear and plead at the next rules.

1883, December rules.—The defendant failing to appear and
546 plead, it is ordered that his default be entered and judgment entered for the plaintiff.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 2nd day of January, 1882, there was an order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs. } In Ejectment.
MICHAEL O'BRIEN.

This day the defendant, Michael O'Brien, appeared, by his attorneys, Simms & Enslow, and moved to quash the notice in this action and demurred to the declaration, in which the plaintiff joined; and for further plea says that the defendant is not guilty of unlaw-

fully withholding the premises claimed by the plaintiff in his declaration, and the plaintiff replied generally, and the defendant is allowed to file his disclaimer at the next term to a part of the said premises.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1885, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
MICHAEL O'BRIEN. } In Ejectment.

The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is ordered to be and is removed to the circuit court of the county of Summers, to be tried and determined according to law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in this cause, which is in the words and figures following, to wit:

547

JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. OF W. VA. } In Ejectment.

SAME
vs.
SAME. } In Ejectment.

SAME
vs.
GEO. PEKO. } In Ejectment.

SAME
vs.
MICHAEL O'BRIEN. } In Ejectment.

SAME
vs.
S. R. HALL. } In Ejectment.

SAME
vs.
JASPER JACKSON ET AL. } In Ejectment.

SAME
vs.
CATHERINE KNEFF. } In Ejectment.

SAME *vs.* A. L. WILLIAMS.	In Ejectment.
SAME *vs.* WILLIAM DUSTER.	In Ejectment.
SAME *vs.* S. F. JOBE.	In Ejectment.
SAME *vs.* ALBERT NAPIER.	In Ejectment.
SAME *vs.* ROBERT WOODSON ET AL.	In Ejectment.
SAME *vs.* J. M. NOBLE ET AL.	In Ejectment.
SAME *vs.* S. A. REMLEY.	In Ejectment.
SAME *vs.* C. F. REMLEY.	In Ejectment.
SAME *vs.* CLAY GREENWELL.	In Ejectment.
SAME *vs.* MARGARET SANDS.	In Ejectment.
SAME *vs.* S. J. LOVE ET AL.	In Ejectment.
SAME *vs.* E. T. MITCHEL.	In Ejectment.
SAME *vs.* R. T. HARVEY.	In Ejectment.

The foregoing nineteen cases having been remanded to this court from the circuit court of Summers county, on motion of the plaintiff the same are now docketed and continued until the next term of this court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
MICHAEL O'BRIEN. } In Ejectment.

548 This day came the parties, by their attorneys, and thereupon the defendant filed his claim for permanent improvements placed upon the land in controversy, and the plaintiff asked that the value of his estate in the premises without the improvements may also be ascertained, which is accordingly ordered. Thereupon came a jury, to wit, B. F. Johnston, Jno. A. Morris, Harrison Derton, Wm. Cooper, E. G. Blankenship, J. A. Walkinshaw, T. J. Guinn, Chas. Collins, Jeremiah Ball, Rezin Swann, M. T. Blankenship, and Jno. H. Williams, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein and a true verdict render accord*ed* to the evidence, and after hearing the evidence and argument of counsel retired to consider of their verdict, and after some time returned into court and on their oaths do say: "We, the jury, find for the plaintiff the following-described parcel of land, being a part of the land in the declaration mentioned, to wit, all that certain piece of land situate on the south side of Third avenue between Sixth and Seventh streets, in the city of Huntington, and designated on a certain map of said city made by Rufus Cook, surveyor, a lithograph copy of which was filed in the recorder's office of Cabell county on the sixth day of December, 1871, as lot number four (4), in block number six*th*-eight (68), being 30 feet wide by one hundred and sixty feet deep to an alley, and that the plaintiff hath an estate in fee-simple therein. We further find that the value of the plaintiff's estate in said premises without the improvements is $450.00, and after setting off the amount allowed the plaintiff for the annual value of said premises against the amount allowed the defendant for improvements we find for the defendant the balance of $1,000.00."

And thereupon the plaintiff, by his attorney, elected to relinquish his estate in the premises to the defendant at the value so ascertained.

It is therefore considered by the court that the said defendant henceforth hold all the estate that the plaintiff had in said premises above described at the commencement of this action, provided he pay therefor the said sum of $450.00, the value of said estate in manner aforesaid assessed, with interest thereon from this date. The
549 said sum, with interest, shall be paid to the said plaintiff on or before the first day of the next term of this court, and if not so paid within said time, then the court reserves the right to order a sale of said premises to enforce said payment. It is further considered by the court that the plaintiff recover against said defend-

ant his costs about the prosecution of his suit in this behalf expended, including $5.00 allowed by statute.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 15th day of December, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
MICHAEL O'BRIEN. } In Ejectment.

This day came again the parties, by their attorneys, and the defendants, not having paid the sum of $450.00 adjudged against *them* at the last term of this court, nor any part thereof, nor the costs of this action: therefore, on motion of the plaintiff, by his attorney, it is considered by the court that the said real estate, with its appurtenances, be sold at public auction, to the highest bidder, at the front door of the court-house, on the terms of one-half of the purchase-money cash in hand on day of sale, and the residue thereof, with interest, in 6 months, the purchaser giving his note for the deferred payment, with good personal security, and the legal title to said land retained till the same is paid as further security.

And John H. Holt and C. W. Campbell are hereby appointed commissioners, with directions and power to carry out this order by making said sale, but before acting they shall give bond before the clerk of this court in the penalty of $500.00, with good security, to be approved by said clerk, with conditions as required by law. They shall give at least four weeks' notice of the time, place, manner, and terms of said sale by publication thereof in the Huntington Advertiser, a weekly newspaper printed in this county, and
550 posting a copy of said notice on the front door of the court-house of this county for at least twenty days prior to day of sale, and they shall report their action under this order to this court for approval or rejection.

STATE OF WEST VIRGINIA, } *To wit:*
County of Cabell, }

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings made and had in a cause lately determined in said circuit court, wherein John B. Laidley was plaintiff and Michael O'Brien was defendant.

Given under my hand this 21st day of April, 1891.

B. C. WILSON.
Clerk Cir. Court, Cabell Co.

EXHIBIT NO. 9 WITH PLEA AND ANSWER.

(Filed Feb'y 26, 1896.)

STATE OF WEST VIRGINIA:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890.

JOHN B. LAIDLEY
vs.
ALBERT NAPIER. } In Ejectment.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed his declaration and notice in ejectment against the defendant, which, together with the sheriff's return and rules thereon endorsed, are in the words and figures following, to wit:

Declaration.

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

551 John B. Laidley, plaintiff, complains of Albert Napier, of a plea of trespass, for this: that, to wit, on the 1st day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east in part by Seventh street, formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 248 acres, and more particularly described as follows: Beginning at a stake on the Ohio river, corner of lot No. 3, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 3 poles and six links; thence S. 13 E. 120 poles to 2 white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to 2 white oaks on a hill, S. 54 E. 62 poles to 2 black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by

her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendant afterwards, to wit, on the 1st of March, 1882, entered into the same and unlawfully withholds *the same* from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000.00, and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

Notice.

To Albert Napier:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the
552 circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return.

I served the within notice and declaration by giving a true copy thereof to Albert Napier on the 3rd day of November, 1883.

E. KYLE, *S. C. C.*,
By E. S. BUFFINGTON, *Dep-ty.*

Rules Endorsed.

1883, November rules.—Declaration and notice filed and service proved by the return of the sheriff thereon endorsed, and a rule is awarded the plaintiff against the defendant, Albert Napier, to appear and plead at the next rules.

1883, December rules.—The defendant failing to appear and plead, it is ordered that his default be entered and judgment be entered for the plaintiff.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 2nd day of January, 1884, there was an order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs. } In Ejectment.
ALBERT NAPIER.

This day the defendant, Albert Napier, appeared, by his attorneys, Simms and Enslow, and moved to quash the notice in this action, and demurred to the declaration, in which the plaintiff joined, and for further plea says that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff in his declaration, and the defendant is allowed to file his disclaimer at the next term to a part of the said premises.

553 And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1885, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
ALBERT NAPIER. } In Ejectment.

The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is ordered to be and is removed to the circuit court of the county of Summers, to be tried and determined according to law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. OF W. VA. } In Ejectment.

SAME
vs.
SAME. } In Ejectment.

SAME
vs.
GEORGE PEKO. } In Ejectment.

SAME
vs.
MICHAEL O'BRIEN. } In Ejectment.

SAME
vs.
S. R. HALL. } In Ejectment.

SAME
vs.
JASPER JACKSON ET AL. } In Ejectment.

SAME
vs.
CATHERINE KNEFF. } In Ejectment.

SAME
vs.
A. L. WILLIAMS. } In Ejectment.

SAME
vs.
WILLIAM DUSTER. } In Ejectment.

	SAME *vs.* S. F. JOBE.	In Ejectment.
	SAME *vs.* ALBERT NAPIER.	In Ejectment.
	SAME *vs.* ROB'T WOODSON ET AL.	In Ejectment.
	SAME *vs.* J. M. NOBLE ET AL.	In Ejectment.
	SAME *vs.* S. A. REMLEY.	In Ejectment.
	SAME *vs.* C. F. REMLEY.	In Ejectment.
554	JOHN B. LAIDLEY *vs.* CENTRAL LAND CO. OF W. VA.	In Ejectment.
	SAME *vs.* CLAY GREENWELL.	In Ejectment.
	SAME *vs.* MARGARET SANDS.	In Ejectment.
	SAME *vs.* S. J. LOVE ET AL.	In Ejectment.
	SAME *vs.* E. T. MITCHELL.	In Ejectment.
	SAME *vs.* R. T. HARVEY.	In Ejectment.

The foregoing nin-teen cases having been remanded to this court from the circuit court of Summers county, on motion of the plaintiff the same are now docketed and continued until the next term of this court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890.

JOHN B. LAIDLEY
vs.
ALBERT NAPIER. } In Ejectment.

This day came the plaintiff, by his attorney, and thereupon came J. L. M. Curry, by T. W. Taylor, his attorney, and represented to the court that he was the landlord of the defendant, Albert Napier, and moved to be substituted in the room and stead of the said Napier as defendant in this action, and it is accordingly so ordered. Thereupon the said Curry, for plea in this behalf, says he is not guilty of the trespass in manner and form as the said plaintiff in his declaration hath alleged, and puts himself upon the country, and the plaintiff doth likewise; and the defendant filed his claim for permanent improvements placed upon the lands in controversy, and the plaintiff asked that the value of his estate in the premises without the improvements may also be ascertained, which is accordingly ordered.

Thereupon came a jury, to wit, B. F. Johnston, Jno. A. Morris, Harrison Derton, Wm. Cooper, E. G. Blankenship, J. A. Walkinshaw, T. J. Guinn, Charles Collins, M. T. Blankenship, and John H. Williams, who were drawn, selected, tried, and sworn in the
555 manner required by law to well and truly try the issue joined herein and a true verdict render according to the evidence, and after hearing the evidence and arguments of counsel retired to their room to consider of their verdict, and after some time returned into court and on their oaths do say:

"We, the jury, find for the plaintiff, John B. Laidley, the following-described parcel of land, being a part of the land in the declaration mentioned, to wit, all that certain lot of land situate on the north side of Third avenue between Sixth and Seventh streets, in the city of Huntington, and designated on a certain map of said city made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county on the 6th day of December, 1871, and designated thereon as lot No. 18, in block No. 67, being thirty feet front by 200 feet deep, and that the plaintiff has an estate in fee-simple therein. We further find that the value of the plaintiff's estate in the premises without the improvements is $450.00; also, after setting off the amount allowed the plaintiff for the annual value of said premises against the amount allowed the defendant for improvements, we find for the defendant the sum of $1,000.00."

And thereupon the said plaintiff, by his attorney, elected to relinquish his estate in the premises to the defendant at the value so ascertained. It is therefore considered by the court that the said defendant *be* henceforth hold all the estate that the plaintiff had in said premises above described at the commencement of this action, provided he pay therefor the said sum of $450.00, the value of said

premises in manner aforesaid assessed, with interest thereon from this date. The said sum, with interest, shall be paid to the said plaintiff on or before the first day of the next term of this court, and if not so paid within said time, then the court reserves the right to order a sale of said premises to enforce said payment. It is further considered by the court that the plaintiff recover against the
556 said defendant his costs about the prosecution of his suit in that behalf expended, including $5.00, as allowed by statute.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 15th day of December, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
J. L. M. CURRY and ALBERT NAPIER. } In Ejectment.

This day came again the parties, by their attorneys, and the defendants not having paid the sum of $450.00 adjudged against them at the last term of this court, nor any part thereof, nor the costs of this action: therefore, on motion of the plaintiff, by his attorney, it is considered by the court that the said real estate, being lot No. 18 of block No. 67, with its appurtenances, be sold at public auction to the highest bidder, at the front door of the court-house, on the terms of one-half cash in hand on day of sale and the residue thereof, with interest, in six months, the purchaser giving his note for the deferred payment, with good personal security, and the legal title to said land retained till the same is paid as further security; and John H. Holt and C. W. Campbell are hereby appointed commissioners, with direction and power to carry out this order by making said sale, but before acting they shall give bond in the penalty of $500.00 before the clerk of this court, with good security, to be approved by said clerk, and with condition as prescribed by law. They shall give at least 4 weeks' notice of the time, place, manner, and terms of said sale by publication thereof in the Huntington Advertiser, a weekly newspaper printed in said county, and posting a copy of such notice on the front door of the court-house of this county for at least twenty days prior to day of sale, and they shall report their action under this order to this court for approval or rejection.

557 STATE OF WEST VIRGINIA, } *To wit:*
County of Cabell, }

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings made and had in a cause lately determined in said

circuit court, wherein John B. Laidley was plaintiff and Albert Napier was defendant.

Given under my hand this 21st day of April, 1891.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

EXHIBIT NO. 10 WITH PLEA AND ANSWER.

(Filed Feb'y 26, 1896.)

STATE OF WEST VIRGINIA:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890.

JOHN B. LAIDLEY
vs.
S. F. JOBE. } In Ejectment.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed his declaration and notice against the defendant, which, together with the sheriff's return and the rules thereon endorsed, are in the words and figures following, to wit:

Declaration.

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

John B. Laidley, plaintiff, complains of S. F. Jobe, defendant, of a plea of trespass, for this: that, to wit, on the 1st day of February, 1882, the plaintiff was seized of an estate in fee and possessed
558 of a certain tract of land situate, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east in part by Seventh street, formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows:

Beginning at a stake on the Ohio river, corner of lot No. 3, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the southeast corner of the Brown

tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendant afterwards, to wit, on the 1st of March, 1882, entered into the same and unlawfully withholds from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000, and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

Notice.

To S. F. Jobe:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto
559 within the time prescribed by law judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Notice.

To S. F. Jobe:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return.

I served the within declaration and order by giving a true copy thereof to S. F. Jobe on the 3rd day of November, 1883.

E. KYLE, *S. C. C.*,
By E. S. BUFFINGTON, *Dep'ty.*

Rules Endorsed.

1883, November rules.—Declaration and notice filed and service proved by the return of the sheriff thereon endorsed, and a rule is awarded the plaintiff against the defendant to appear and plead at the next rules.

1883. December rules, 1883.—The defendant failing to appear and plead, it is ordered that his default be entered and judgment entered for the plaintiff.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 2nd day of January, 1884, there was an order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
S. F. JOBE. } In Ejectment.

This day the defendant, S. F. Jobe, appeared, by Simms & Enslow, his attorneys, and moved to quash the notice in this action and demurred to the declaration, in which the plaintiff joined, and
560 for further plea says that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff in his declaration, and the plaintiff replies generally, and the defendant is allowed to file his disclaimer at the next term to a part of the premises.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1885, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
S. F. JOBE. } In Ejectment.

The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is ordered to be and is removed to the circuit court of the county of Summers, to be tried and determined according to law:

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. OF W. VA. } In Ejectment.

SAME
vs.
SAME. } In Ejectment.

SAME
vs.
GEORGE PEKO. } In Ejectment.

SAME
vs.
MICHAEL O'BRIEN. } In Ejectment.

	SAME *vs.* S. R. HALL.	In Ejectment.
	SAME *vs.* JASPER JACKSON ET AL.	In Ejectment.
	SAME *vs.* CATHERINE KNEFF.	In Ejectment.
	SAME *vs.* A. L. WILLIAMS.	In Ejectment.
	SAME *vs.* WILLIAM DUSTER.	In Ejectment.
	SAME *vs.* S. F. JOBE.	In Ejectment.
	SAME *vs.* ALBERT NAPIER.	In Ejectment.
	SAME *vs.* ROB'T WOODSON ET AL.	In Ejectment.
561	JOHN B. LAIDLEY *vs.* CENTRAL LAND CO. OF W. VA.	In Ejectment.
	SAME *vs.* J. M. NOBLE ET AL.	In Ejectment.
	SAME *vs.* S. A. REMLEY.	In Ejectment.
	SAME *vs.* C. F. REMLEY.	In Ejectment.
	SAME *vs.* CLAY GREENWELL.	In Ejectment.
	SAME *vs.* MARGARET SANDS.	In Ejectment.

SAME
vs.
S. J. LOVE ET AL. } In Ejectment.

SAME
vs.
E. T. MITCHELL. } In Ejectment.

SAME
vs.
R. T. HARVEY. } In Ejectment.

The foregoing nin-teen cases having been remanded to this court from the circuit court of Summers county, on motion of the plaintiff the same are now docketed and continued until the next term of this court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 12th day of April, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
S. F. JOBE. } In Ejectment.

This day came the plaintiff, by his attorney, and suggested the death of the defendant; whereupon, on motion of the plaintiff, a *scire facias*, returnable to the first day of the May adjourned term, be, and the same is hereby, awarded the plaintiff against L. R. Jobe, widow, and W. R. Jobe, Thomas Jobe, Carlos Jobe, Mary Jobe, and Hattie Jobe, children and heirs-at-law of S. F. Jobe, deceased.

Scire Facias.

State of West Virginia to the sheriff of Cabell county, Greeting:

Whereas in an action of ejectment lately depending in our circuit court for Cabell county between John B. Laidley, plaintiff, and S. F. Jobe, defendant, proceedings were so far had that the
562 declaration was filed, rules regularly taken thereon, and the defendant pled "not guilty," and, the cause being thus situated, the said S. F. Jobe departed this life, leaving as his heirs-at-law L. R. Jobe, his widow, and W. R. Jobe, Thomas Jobe, Carlos Jobe, Mary Jobe, and Hattie Jobe, his children:

Therefore we command you that you make known to the said L. R. Jobe, W. R. Jobe, Thomas Jobe, Carlos Jobe, Mary Jobe, and Hattie Jobe that they be before the judge of our said court, at the court-house of said county, on the first day of the next May adjourned term, to show cause, if any they can, why the said action should not be proceeded in to final judgment according to law; and have then there this writ.

Witness F. W. Peyton, clerk of our said court, at the court-house of said county, the 28th day of April, 1890, and in the 27th year of the State.

F. W. PEYTON, *Clerk.*

Sheriff's Return.

Executed on L. R. Jobe, W. R. Jobe, Carlos Jobe, Mary Jobe, and Hattie Jobe on the 5th day of May, 1890, by delivering an office copy of the within summons to each of them in my county; as to Thomas Jobe, not found in my county.

E KYLE, *S. C. C.*,
By I. T. STEWART,
Dep-ty S. C. C.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
L. R. JOBE, W. R. JOBE, THOS. JOBE, CARLOS JOBE, Mary Jobe, & Hattie Jobe. } In Ejectment.

This day came again the parties, by their attorneys, and thereupon the defendants filed their claim for permanent improvements placed upon the land in controversy, and the plaintiff asked
563 that the value of his estate in the premises without the improvements may also be ascertained, which is accordingly ordered.

Thereupon came a jury, to wit, B. F. Johnston, John A. Morris, Harrison Derton, Wm. Cooper, E. G. Blankenship, J. A. Walkinshaw, T. J. Guinn, Chas. Collins, Jeremiah Ball, Rezin Swann, M. T. Blankenship, and Jno. H. Williams, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein and a true verdict render according to the evidence, and after hearing the evidence and arguments of counsel retired to consider of their verdict, and after some time returned into court and upon their oaths do say:

"We, the jury, find for the plaintiff the following-described parcel of land, being a part of the land in the declaration mentioned, to wit, all that certain piece and parcel of land situate on the south side of Third avenue between Sixth and Seventh streets, in the city of Huntington, and designated on a certain map of said city made by Rufus Cook, surveyor, a lithograph copy of which was filed in the recorder's office of Cabell county on the sixth day of December, 1871, as lot number 11 (eleven), in block number sixty-eight (68), being thirty (30) feet front by one hundred and sixty feet deep to an alley, and that the plaintiff has an estate in fee-simple therein. We further find that the value of plaintiff's estate in the said prrmises

without the improvements is $400.00, and after setting off the amount allowed the plaintiff for the annual value of said premises against the amount allowed the defendant- for improvements, we find for the defendants the balance of $2,000.00."

And thereupon the said plaintiff, by his attorney, elected to relinquish his estate in the premises to the defendant- at the value so ascertained.

It is therefore considered by the court that the said defendant- henceforth hold all the estate that the plaintiff had in said premises above described at the commencement of this suit, provided *he* pay therefor the sum of $450.00, the value of said estate in manner aforesaid assessed, with interest thereon from this date.

564 The said sum, with interest, shall be paid to the said plaintiff on or before the first day of the next term of this court, and if not so paid within said time, the court reserves the right to order a sale of said premises to enforce said payment. It is further considered by the court that the plaintiff recover against the said defendant- his costs about the prosecution of his suit in that behalf expended, including five dollars allowed by law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 15th day of December, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
S. F. JOBE ET AL. } In Ejectment.

This day came again the parties, by their attorneys, and the defendants not having paid the sum of $450.00, adjudged against them at the last term of this court, nor any part thereof, nor the costs of this suit:

Therefore, on motion of the plaintiff, by his attorney, it is considered by the court that the said real estate, being lot 11, block 68, with its appurtenances, be sold at public auction, to the highest bidder, at the front door of the court-house, on the terms of one-half of the purchase-money cash in hand on day of sale and the residue thereof, with interest, in six months, the purchaser giving his note for the deferred payment, with good personal security, and the legal title to said land retained till the same is paid as further security; and John H. Holt and C. W. Campbell are hereby appointed commissioners, with direction and power to carry out this order by making said sale, but before acting they shall give bond before the clerk of this court in the penalty of $500.00, with good security to be approved by said clerk, with condition as prescribed by law.

They shall give at least four weeks' notice of the time, place,
565 manner, and terms of said sale by publication thereof in the Huntington Advertiser, a weekly newspaper printed in this county, and posting a copy of such notice on the front door of the

court-house of this county for at least 20 days prior to day of sale, and they shall report their action under this order to this court for approval or rejection.

STATE OF WEST VIRGINIA, *County of Cabell,* } *To wit:*

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings made and had in a cause lately determined in said circuit court, wherein John B. Laidley was plaintiff and S. F. Jobe was defendant.

Given under my hand this 21st day of April, 1890.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

566 EXHIBIT No. 11 WITH PLEA AND ANSWER.

(Filed Feb'y 26th, 1896.)

STATE OF W. VA.:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890.

JOHN B. LAIDLEY
vs.
CLAY GREENWELL. } In Ejectment.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed his declaration and notice against the defendants, which declaration, notice, and the sheriff's return and rules thereon endorsed, are in the words and figures following, to wit:

Declaration.

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

John B. Laidley, plaintiff, complains of Clay Greenwell, defendant, of a plea of trespass, for this: that, to wit, on the 1st day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east in part by Seventh street, formerly known as the Beuhring lane, and extending beyond Fourpole creek on the south, containing 240 acres, and more particularly described as follows:

Beginning at a stake, corner of lot No. 3, on the Ohio river, S. 19¼

E. 377 poles to a stake, from which a small sycamore stands S. 1½ E 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 3 poles and six links; thence S. 13 E. 120 poles to
two white oaks, S. 30 W. 36 poles to a white oak among some
567 rocks on a point, south 70 W. 50 poles to a black oak and a
white oak on a point, S. 11½ W. 120 poles to two white oaks on a line, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 — to a white oak and two beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendants afterwards, to wit, on the 1st day of March, 1882, entered into the same and unlawfully withheld from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000, and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

Nointice.

To Clay Greenwell:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law judgment will be given against —.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return on Declaration.

I served the within notice and declaration by giving to Clay Greenwell a true copy of within this 3rd day of November, 1883.

E. KYLE, *S. C. C.*,
By E. S. BUFFINGTON, *Dep'y.*

Rules Endorsed.

568 1883, November rules.—Declaration and notice filed and service proved by the return of the sheriff thereon indorsed, and a rule is awarded the plaintiff against the defendant to appear at the rules and plead

1883, December rules.—The defendant failing to appear and plead, it is ordered that his default be entered and that judgment be entered for the plaintiff.

And on another day, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 2nd day of Jan'y, 1884, there was an order made and entered in the cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CLAY GREENWELL. } In Ejectment.

This day the defendant, Clay Greenwell, by his attorneys, Simms and Enslow, moved to quash the motion in this action and demurred to the declaration, in which the plaintiff joined, and for further plea says that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff in his declaration, and the plaintiff replied generally, and the defendant is allowed to file his disclaimer at the next term to a part of the premises.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1885, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CLAY GREENWELL. } In Ejectment.

The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is ordered to be and is removed to the circuit court of the county of Summers, to be tried and determined according to law.

And on another date, to wit:

569 At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in said court, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. } In Ejectment.

SAME
vs.
SAME. } In Ejectment.

SAME
vs.
GEORGE PEKO. } In Ejectment.

SAME
vs.
MICHAEL O'BRIEN. } In Ejectment.

SAME *vs.* S. R. HALL.	In Ejectment.
SAME *vs.* JASPER JACKSON ET AL.	In Ejectment.
SAME *vs.* CATHERINE KNEFF.	In Ejectment.
SAME *vs.* A. L. WILLIAMS.	In Ejectment.
SAME *vs.* WILLIAM DUSTER.	In Ejectment.
SAME *vs.* S. F. JOBE.	In Ejectment.
SAME *vs.* ALBERT NAPIER.	In Ejectment.
SAME *vs.* ROB'T WOOLSON ET AL.	In Ejectment.
SAME *vs.* J. M. NOBLE ET AL.	In Ejectment.
SAME *vs.* S. A. REMLEY.	In Ejectment.
SAME *vs.* C. F. REMLEY.	In Ejectment.
SAME *vs.* CLAY GREENWELL.	In Ejectment.
SAME *vs.* MARGARET SANDS.	In Ejectment.
SAME *vs.* S. J. LOVE ET AL.	In Ejectment.

SAME
vs.
E. F. MITCHELL. } In Ejectment.

SAME
vs.
R. T. HARVEY. } In Ejectment.

The foregoing nineteen cases have been remanded to this court from the circuit court of Summers county. On motion of the plaintiff, the same are now docketed and continued until the next — of this court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

570 JNO. B. LAIDLEY
vs.
CLAY GREENWELL. } In Ejectment.

This day again came the parties, by their attorneys, and thereupon the defendant filed his claim for permanent improvements placed upon the land in controversy, and the plaintiff asked that the value of his estate in the premises without the improvements may also be ascertained, which is accordingly ordered. Thereupon came a jury, to wit, B. F. Johnston, John A. Morris, Harrison Duston, Wm. Cooper, E. G. Blankenship, J. A. Walkinshaw, T. J. Guiller, Chas. Collins, Jeremiah Ball, Rezin Swann, M. S. Blankenship, and John H. Williams, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein and a true verdict rendered according to the evidence, and after hearing the evidence and argument of counsel retired to consider of the verdict, and after some time returned into court and on their oath- say:

We, the jury, find for the plaintiff the following-described parcel of land, being a part of the land in the declaration mentioned, to wit, all that certain parcel of land situated on the south side of Third avenue between Sixth and Seventh streets, in the city of Huntington, and designated on a certain map of said city made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the recorder of Cabell county on the sixth day of December, 1871, as lot No. 10 (ten), in block sixty-eight (68), being thirty (30) feet wide by 160 feet deep to an alley, and that the plaintiff has an estate in fee-simple therein. We further find that the value of the plaintiff's estate in said premises without the improvements is $450.00, and after setting off the amount allowed the plaintiff for the an-ual value of said premises against the amount allowed the defendant for improvements, we find for the defendant the balance of $1,000.00.

And thereupon the said plaintiff, by his attorney, elected to relin-

quish his estate in the premises to the defendant at the value so ascertained. It is therefore considered by the court that the said defendant henceforth hold all of the estate that the plaintiff
571 had in said premises above described at the commencement of this action, provided he pay therefor the said sum of $450.00, the value of said estate in manner aforesaid assessed, with interest thereon from this date. The said sum, with interest, shall be paid to the said plaintiff on or before the first day of the next term of this court, and if not so paid within said time, then the court reserves the right to order a sale of said premises to enforce said payment. It is further considered by the court that the plaintiff recover against said defendant his costs about the prosecution of his suit in that behalf expended, including five dollars allowed by law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 15th day of December, 1890, there was another order made and entered in said court, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CLAY GREENWELL. } In Ejectment.

This day came again the parties, by their attorneys, and the defendant not having paid the sum of $450.00 adjudged against him at the last term of this court, nor any part thereof, nor the costs of this action: therefore, on motion of the plaintiff, by his attorney, it is considered by the court that the said real estate, being lot 10, block (68), with its appurtenances, be sold at public auction to the highest bidder, at the front door of the court-house, on the terms of one-half of the purchase-money cash in hand on day of sale and the residue thereof, with interest, in six months, the purchaser giving his note for the deferred payments, with good personal security, and the legal title to said land retained till the same is paid as further security; and John H. Holt and C. W. Campbell are hereby appointed commissioners, with directions and power to carry out this order by making said sale, but before acting they shall give bond before the clerk of the court in the penalty of $500.00, with
572 good security, to be approved by said clerk, with condition as prescribed by law. They shall give at least four weeks' notice of the time, place, manner, and terms of sale by publication thereof in the Huntington Advertiser, a weekly newspaper printed in this county, and posting a copy of such notice on the front door of the court-house of this county for at least 20 days prior to day of sale, and they shall report their action under this order to this court for approval or rejection.

STATE OF WEST VIRGINIA, *County of Cabell,* } *To wit:*

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings made and had in a cause lately determined in said circuit court, wherein John B. Laidley was plaintiff and Clay Gre-n-well was defendant.

Given under my hand this 21st day of April, 1891.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

EXHIBIT NO. 12 WITH PLEA AND ANSWER.

(Filed Feb'y 26th, 1896.)

STATE OF W. VA.:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890.

JOHN B. LAIDLEY
vs.
CATHERINE KNEFF. } In Ejectment.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed his declaration and notice against the defendants; which declaration and notice and rules thereon endorsed are in the words and figures following, to wit:

573 *Declaration.*

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

John B. Laidley, plaintiff, complains of Catherine Kneff, defendant, of a plea of trespass, for this: that, to wit, on the 1st day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situated, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east in part by seventh street, formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows: Beginning at a stake, corner of lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36

poles to a white oak among some rocks on a point, south 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendants afterwards, to wit, on the 1st day of March, 1882, entered into the same and unlawfully withheld from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000, and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

574 *Notice.*

To Catherine Kneff:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return on Declaration.

I served within declaration and notice by giving a true copy thereof to Catherine Kneff on the 3rd day of November, 1883.

E. KYLE, *S. C. C.*,
By E. S. BUFFINGTON, *Dep'y.*

Rules Indorsed.

1883, November rules.—Declaration and notice filed and service proved by the return of the sheriff thereon indorsed, and a rule is awarded the plaintiff against the defendant to appear and plead at next rules.

1883, December rule.—The defendant failing to appear and plead, it is ordered that his default be entered and judgment given for the plaintiff.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 2nd day of Jan'y, 1884, there was an order made and

entered in the cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CATHERINE KNEFF. } In Ejectment.

The defendant, Catherine Kneff, appeared by her attorneys, Simms and Enslow, and moved to quash the notice in this action and demurred to the declaration, in which the plaintiff joined, and for further plea says that the defendant is not guilty of unlaw-
575 fully withholding the premises claimed by the plaintiff in his declaration, and the plaintiff replied generally, and the defendant is allowed to file her declaration at the next term to a part of the said premises.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1885, there was another order made and entered in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CATHERINE KNEFF. } In Ejectment.

The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is ordered to be and is removed to the circuit court of the county of Summers to be tried and determined according to law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in the words and figures following, to wit:

JNO. B. LAIDLEY
vs.
CENTRAL LAND CO. OF W. VA. } In Ejectment.

SAME
vs.
SAME. } In Ejectment.

SAME
vs.
GEO. PEKO. } In Ejectment.

SAME
vs.
MICHAEL O'BRIEN. } In Ejectment.

SAME
vs.
S. R. HALL. } In Ejectment.

	SAME *vs.* JASPER JACKSON ET AL.	In Ejectment.
	SAME *vs.* CATHERINE KNEFF.	In Ejectment.
	SAME *vs.* A. L. WILLIAMS.	In Ejectment.
	SAME *vs.* WILLIAM DUSTER.	In Ejectment.
	SAME *vs.* S. F. JOBE.	In Ejectment.
	SAME *vs.* ALBERT NAPIER.	In Ejectment.
	SAME *vs.* ROB'T WOOLSON ET AL.	In Ejectment.
576	JOHN B. LAIDLEY *vs.* J. M. NOBLE ET AL.	In Ejectment.
	SAME *vs.* S. A. REMLEY.	In Ejectment.
	SAME *vs.* C. F. REMLEY.	In Ejectment.
	SAME *vs.* CLAY GREENWELL.	In Ejectment.
	SAME *vs.* MARGARET SANDS.	In Ejectment.
	SAME *vs.* S. J. LOVE ET AL.	In Ejectment.
	SAME *vs.* E. T. MITCHELL.	In Ejectment.

SAME
vs.
R. T. HARVEY. } In Ejectment.

The foregoing nineteen cases having been remanded to this court from the circuit court of Summers county, on motion of the plaintiff the same are now docketed and continued until the next term of this court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 13th day of May, 1890, there was another order made and entered in the cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CATHERINE KNEFF. } In Ejectment.

This day the defendant, by her attorneys, tendered an account showing the improvements made by her and those under whom she claims on the premises in the declaration mentioned, and the court permitted said account to be filed, subject to the objection of the plaintiff, such as may hereafter be made.

And at another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890, there was another order made and entered in the cause, which is in the words and figures following, to wit:

577 JNO. B. LAIDLEY
vs.
CATHERINE KNEFF. } In Ejectment.

This day again came the parties, by their attorneys, and thereupon the defendant filed *his* claim for permanent improvements placed upon the land in controversy; and the plaintiff asked that the value of his estate in the premises without the improvements may also be ascertained, which is accordingly ordered. Thereupon came a jury, to wit, B. F. Johnson, John A. Morris, Harrison Duston, Wm. Cooper, E. G. Blankenship, J. A. Walkinshaw, T. J. Guinn, Chas. Collins, Jeremiah Ball, Rezin Swann, M. T. Blankenship, and John H. Williams, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue *found* herein and a true verdict render according to the evidence, and after hearing the evidence and argument of counsel retired to consider of their verdict, and after some time returned into court and on their oaths say:

We, the jury, find for the plaintiff the following-described parcel of land, being a part of the land in the declaration mentioned, to wit: All those certain parcels of land situated on the south side of Third avenue between Sixth and Seventh streets, in the city of

Huntington, and designated on a certain map of said city made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the recorder of Cabell county on the sixth day of December, 1871, as lots number- eight (8) and nine (9), in block sixty-eight (68), being each thirty (30) feet wide by one hundred and sixty (160) — deep*t* to an alley, and that the plaintiff has an estate in fee-simple therein.

We further find that the value of the plaintiff's estate in said premises without the improvements is $900.00, and after setting off the amount allowed the plaintiff for the annual value of said premises against the amount allowed the defendant for improvements, we find for the defendant the balance of $2,500.00.

And thereupon the said plaintiff, by his attorney, elected to relinquish his estate in the premises to the defendant at the value so ascertained. It is therefore considered by the court that the said
578 defendant henceforth hold all the estate that the plaintiff had in said premises *about* described at the commencement of this action, provided he pay therefor the said sum of $900.00, the value of the said estate in manner aforesaid assessed, with interest thereon from this date. The said sum, with interest, shall be paid to the said plaintiff on or before the first day of the next term of this court; and if not so paid within said term, then the court reserves the right to order a sale of said premises to enforce said payment. It is further considered by the court that the plaintiff recover against said defendant his costs about the prosecution of his suit in that behalf expended, including five dollars allowed by law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 15th day of December, 1890, there was another order made and entered in this cause in the words and figures following, to wit:

JOHN B. LAIDLEY
vs. } In Ejectment.
CATHERINE KNEFF.

This day came again the parties, by their attorneys, and the defendant, not having paid the sum of $900.00 adjudged against her at the last term of this court, nor any part thereof, nor the costs of this action: therefore, on motion of the plaintiff, by his attorney, it is considered by the court that the said real estate, with its appurtenances, be sold at public auction, to the highest bidder, at the front door of the court-house, on the terms of one-half of the purchase-money cash in hand on day of sale and the residue thereof, with interest, in six months, the purchaser giving his note for the deferred payment, with good personal security, and the legal title to said land retained till the same is paid as further security; and John H. Holt and C. W. Campbell are hereby appointed commissioners, with direction and power to carry out this order by making said sale; but

before acting they shall give bond before the clerk of the
579 court in the penalty of $900.00, with good security, to be approved by the clerk, with condition as prescribed by law. They shall give at least four weeks' notice of the time, place, manner, and terms of said sale by publication thereof in the Huntington Advertiser, a weekly newspaper printed in this county, and posting a copy of said notice on the front door of the court-house of this county for at least 20 days prior to day of sale, and they shall report their action under this order to this court for approval or rejection.

STATE OF WEST VIRGINIA, } *To wit:*
County of Cabell, }

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings made and had in a cause lately determined in said circuit court, wherein Jno. B. Laidley was plaintiff and Catherine Kneff was defendant.

Given under my hand this 21st day of April, 1890.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

EXHIBIT NO. 13 WITH PLEA AND ANSWER.

(Filed Feb'y 26th, 1896.)

STATE OF W. VA.:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890.

JOHN B. LAIDLEY
vs. } In Ejectment.
MARGARET SANDS.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed his declaration and
580 notice against the defendant; which declaration, notice, and the sheriff's return and rules thereon endorsed are in the words and figures following, to wit:

Declaration.

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

John B. Laidley, plaintiff, complains of Margaret Sands, defendant, — a plea of trespass, for this: that, to wit, on the 1st day of February, 1882, the plaintiff — seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the city

of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east, in part, by Seventh street, formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows: Beginning at a stake, corner of lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to white oak among some rocks on a point, south 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendant afterwards, to wit, on the 1st day of March, 1882,
581 entered into the same and unlawfully withheld from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000, and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

Notice.

To Margaret Sands:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return on Declaration.

I served the with- notice and declaration by giving a true copy of the same to Margaret Sands on the 3rd day of November, 1883.

E. KYLE, *S. C. C.*,
By E. S. BUFFUNGTON, *Dep-ty.*

Rules Indorsed.

1883, November rules.—Declaration and notice filed and service proved by the return of the sheriff thereon indorsed, and a rule is

awarded the plaintiff against the defendant to appear here and plead at the next rules.

1883, December rules.—The defendant failing to apper and plead, it is ordered that his default be entered and that judgment be entered for the plaintiff.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 2nd day of Jan'y, 1884, there was an order made and entered in this cause, which is in the words and figures following, to wit:

582 JOHN B. LAIDLEY *vs.* MARGARET SANDS. } In Ejectment.

This day the defendant, Margaret Sands, appeared, by her attorneys, Simms & Enslow, and moved to quash the notice in this action, and *demands* to the declaration, in which the plaintiff joined, and for further plea says that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff in his declaration, and the plaintiff replies generally, and the defendant is allowed to file *his* disclaimor at the next term to a part of the said premises.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1885, there was another order made and entered in the words and figures following, to wit:

JOHN B. LAIDLEY *vs.* MARGARET SANDS. } In Ejectment.

The judge of the court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is ordered to be and is removed to the circuit court of the county of Summers, to be tried and determined according to law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in the words and figures following, to wit:

JOHN B. LAIDLEY *vs.* CENTRAL LAND CO. } In Ejectment.

SAME *vs.* SAME. } In Ejectment.

SAME *vs.* GEORGE Peck. } In Ejectment.

	SAME *vs.* MICHAEL O'BRIEN.	In Ejectment.
	SAME *vs.* S. R. HALL.	In Ejectment.
	SAME *vs.* JASPER JACKSON ET AL.	In Ejectment.
	SAME *vs.* CATHERINE KNEFF.	In Ejectment.
583	JOHN B. LAIDLEY *vs.* A. L. WILLIAMS.	In Ejectment.
	SAME *vs.* WILLIAM DUSTER.	In Ejectment.
	SAME *vs.* S. F. JOBE.	In Ejectment.
	SAME *vs.* ALBERT NAPIER ET AL.	In Ejectment.
	SAME *vs.* J. M. NOBLE ET AL.	In Ejectment.
	SAME *vs.* S. A. REMNEY.	In Ejectment.
	SAME *vs.* C. F. REMNEY.	In Ejectment.
	SAME *vs.* CLAY GREENWELL.	In Ejectment.
	SAME *vs.* MARGARET SANDS.	In Ejectment.
	SAME *vs.* S. J. LOVE ET AL.	In Ejectment.

SAME
vs.
E. T. MITCHELL. } In Ejectment.

SAME
vs.
R. T. HARVEY. } In Ejectment.

The foregoing nineteen cases having been remanded to this court from the circuit court of Summers county, on motion of plaintiff the same are now docketed and continued until the next term of this court.

And on another day, to wit:

At a circuit court — for Cabell county, at the court-house thereof, on the 13th day of May, 1890, there was another order made an- entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
MARGARET SANDS. } In Ejectment.

This day the defendant, by her attorneys, tendered an account showing the improvements made by her and those under whom she claims on the premises in the declaration mentioned, and she permits said account to be filed subject to the objection of the plaintiff, such as may hereafter be made.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890, there was another order made and entered in the cause, which is in the words and
584 figures following, to wit:

JOHN B. LAIDLEY
vs.
MARGARET SANDS. } In Ejectment.

This day came again the parties, by their attorneys, and thereupon the defendant filed *his* claim for permanent improvements placed upon the land in controversy, and the plaintiff asked that the value of his estate in the premises without the improvements may also be ascertained, which is according- ordered. Thereupon came a jury, to wit, B. F. Johnston, John A. Morris, Harrison Duston, Wm. Cooper, E. G. Blankenship, J. A. Walkinshaw, T. J. Guinn, Chas. Collins, Jeremiah Ball, Rezin Swann, M. T. Blankenship, and John H. Williams, who were drawn, selected, tried, and sworn in the manner required by law to *law* and truly try the issue joined herein and a true verdict render according to the evidence, and after hearing the evidence and argument of counsel retired to consider of their verdict, and after some time returned into court and upon their oath- say:

We, the jury, find for plaintiff the following-described parcel of land, being a part of the land in the declaration mentioned, to wit, all that certain parcel of land situate on the south — Third avenue between Sixth and Seventh streets, in the city of Huntington, designated on a certain map of said city made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the recorder of Cabell county on the sixth day of December, 1871, as lot number seven, 7, in block number sixty-eight (68), being thirty feet wide by one hundred sixty feet deep to an alley, and that the plaintiff hath an — in fee-simple therein. We further find that the value of the plaintiff's estate in the premises aforesaid without the improvements is $450.00. After setting off the amount allowed the plaintiff for the annual value of said premises against the amount allowed the defendant for improvements, we find for the defendant the balance of $1,500.00.

And thereupon the said plaintiff, by his attorney, elected to relinquish his estate in the premises to the defendant at the value so ascertained. It is therefore considered by the court that the said
585 defendant henceforth hold all the estate that the plaintiff had in said premises above described at the commencement of this action, provided *he* pay therefor the said sum of $450.00, the value of said estate in manner aforesaid assessed, with interest thereon from this date. The said sum, with interest, shall be paid to the said plaintiff *to the said plaintiff* on or before the first day of the next term of this court, and if not so paid within said time, then the court reserves the right to order a sale of said premises to enforce said payment. It is further considered by the court that the plaintiff recover against said defendant his costs about the prosecution of his suit in that behalf expended, including five dollars allowed by law.

STATE OF WEST VIRGINIA, *County of Cabell,* } *To wit:*

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings made and had in a cause lately determined in said circuit court, wherein John B. Laidley was plaintiff and Margaret Sands was defendant.

Given under my hand this 21st day of April, 1891.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

EXHIBIT NO. 14 WITH PLEA AND ANSWER.

(Filed Feb'y 26th, 1896.)

STATE OF WEST VIRGINIA:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 17th day of December, 1890.

JOHN B. LAIDLEY *vs.* GEORGE PEKO. } In Ejectment.

586 Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed his declaration in ejectment against the *plaintiff*, which, together with the sheriff's return and rules thereon endorsed, are in the words and figures following, to wit:

Declaration.

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

John B. Laidley, plaintiff, complains of George Peko, defendant, of a plea of trespass, for this: that, to wit, on the first day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east in part by Seventh street, formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows:

Beginning at a stake corner to lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to 2 black oaks, N. 40 — 100 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr.,

and conveyed to her by John Laidley, special commissioner,
587 and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendant afterwards, to wit, on the first of March, 1882, entered into the same and unlawfully withholds from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000.00, and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

Notice.

To Geo. Peko:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return.

Geo. Peko not being found at his usual place of abode, I served the within notice and declaration by delivering a true copy thereof to Eliza Peko, his wife, she being above the age of sixteen years, and giving information of the purport thereof to her, at his usual place of abode, on the 3rd day of Nov., 1883.

E. KYLE, *S. C. C.*,
By E. S. BUFFINGTON, *Dep-ty.*

Rules Endorsed.

1883, November rules.—Declaration and notice filed and service proved by the return of the sheriff thereon endorsed, and a rule is awarded the plaintiff against the defendant to appear and plead at the next rules.

588 1883, December rules.—The defendant failing to appear and plead, it is ordered that his default be entered and judgment entered for the plaintiff.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 2nd day of January, 1884, there was an order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs. } In Ejectment.
GEORGE PEKO.

This day the defendant, Geo. Peko, appeared, by his attorneys, Simms & Enslow, and moved to quash the motion in this action and demurred to the declaration, in which the plaintiff joined; and for further plea says that the defendant is not guilty of unlawfully

withholding the premises claimed by the plaintiff in his declaration, and the plaintiff replies generally, and the defendant is allowed to file his disclaimer at the next term to a part of the said premises.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1885, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
GEORGE PEKO. } In Ejectment.

The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is ordered to be and is removed to the circuit court of the county of Summers, to be tried and determined according to law.

And on another day, to wit:

589 At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. OF W. VA. } In Ejectment.

SAME
vs.
SAME. } In Ejectment.

SAME
vs.
GEORGE PEACO. } In Ejectment.

SAME
vs.
MICHAEL O'BRIEN. } In Ejectment.

SAME
vs.
S. R. HALL. } In Ejectment.

SAME
vs.
JASPER JACKSON ET AL. } In Ejectment.

SAME
vs.
CATHERINE KNEFF. } In Ejectment.

SAME
vs.
A. L. WILLIAMS. } In Ejectment.

SAME *vs.* WILLIAM DUSTER.	In Ejectment.
SAME *vs.* S. F. JOBE.	In Ejectment.
SAME *vs.* ALBERT NAPIER.	In Ejectment.
SAME *vs.* ROB'T WOODSON ET AL.	In Ejectment.
SAME *vs.* J. M. NOBLE ET AL.	In Ejectment.
SAME *vs.* S. A. REMLEY.	In Ejectment.
SAME *vs.* C. F. REMLEY.	In Ejectment.
SAME *vs.* CLAY GREENWELL.	In Ejectment.
SAME *vs.* MARGARET SANDS.	In Ejectment.
SAME *vs.* S. J. LOVE ET AL.	In Ejectment.
SAME *vs.* E. F. MITCHELL.	In Ejectment.
SAME *vs.* R. T. HARVEY.	In Ejectment.

The foregoing nineteen cases having been remanded to this court from the circuit court of Summers county, on motion of plaintiff the same are now docketed and continued until the next term of this court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 17th day of December, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

590 JOHN B. LAIDLEY *vs.* GEORGE PEKO. } In Ejectment.

This day came again the parties, by their attorneys, and thereupon came Charles Rose, by his attorneys, Gibson & Michie, and moved the court to be substituted as defendant in this action in room and stead of his tenant, George Peko, and there being no objection to said motion, it is considered by the court that the said Charles Rose be, and he is hereby, substituted and made defendant to this action in the room and stead of the said Peko.

And thereupon the said Peko, for plea in this behalf, says he is not guilty of unlawfully withholding from the plaintiff the premises in the declaration mentioned and described in manner and form as the said plaintiff against him hath alleged, and of this he puts himself upon the country, and the plaintiff doth the like.

And the said defendant filed his claim for permanent improvements placed upon the premises by himself and those under whom he holds; and the said plaintiff asked that the value of his estate in the premises be also ascertained, which is accordingly so ordered.

Thereupon came a jury, to wit, T. J. Butcher, Joseph Berger, Harless Braley, R. P. Hensey, Jas. A. Meadows, Jr., R. B. Malcolm, D. L. Perry, R. J. Roberts, Wm. Sunderland, Hooper Stevens, Harvey Templeton, and John T. Yates, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein and a true verdict render according to the evidence, and the jury having fully heard the evidence and arguments of counsel retired to their room to consider of their verdict, and after some time returned into court and on their oaths do say:

"We, the jury, find for the plaintiff, John B. Laidley, the following-described parcel of land, being a part of the land in the declaration mentioned, to wit, all that certain lot of land situate on the south side of Third avenue between 6th and 7th streets, in the city of Huntington, and described on a certain map of said city made
591 by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county on the sixth day of December, 1871, and designated thereon as lot No. 6, in block No. 68, being 30 feet wide by 160 feet to an alley, and that the plaintiff has an estate in fee-simple therein. We further find that the value of plaintiff's estate in the premises without the improvements is $400.00; also, after setting off the amount allowed the plaintiff for the annual value of said premises against the amount allowed the defendant for improvements, we find for the defendant the sum of $1,500.00."

And thereupon the said plaintiff, by his attorney, elected to re-

linquish his estate in the premises to the defendant Rose at the value so ascertained.

It is therefore considered by the court that the said defendant henceforth hold all the estate that the plaintiff had in said premises above described at the commencement of this action, provided he pay therefor the said sum of $400.00, the value of said estate in manner aforesaid assessed, with interest thereon from this date. It is further considered by the court that the plaintiff recover his costs about the prosecution of his suit in that behalf expended, including $10.00 allowed by statute.

It is further considered by the court that unless the said defendant or some one for him do pay the said sum of $400.00, with interest and costs aforesaid, within 30 days from the rising of this court, then that said lot of real estate be sold at public auction to the highest bidder, at the front door of the court-house of this county, on the terms of one-half of the purchase-money cash in hand on day of sale and the residue in six months, taking the note of the purchaser for the deferred payment, with good personal security and retaining the legal title as further security.

And John H. Holt and C. W. Campbell are hereby appointed special commissioners, with instruction and power to carry out this order by making said sale, but before acting they shall give bond before the clerk of this court in the penalty of $500.00, with good personal security, to be approved by said clerk and conditioned as required by law; and they shall give at least four weeks'
592 notice of the time, place, manner, and terms of sale by publication thereof once a week for 4 successive weeks prior to day of sale in the Huntington Advertiser, a weekly newspaper published in this county, and posting a copy of said notice on the front door of the court-house for at least twenty days prior to day of sale, and report their action under this order to this court for approval or rejection.

STATE OF WEST VIRGINIA, }
County of Cabell, } *To wit:*

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings made and had in a cause lately determined in said circuit court, wherein John B. Laidley was plaintiff and George Peko was defendant.

Given under my hand this 21st day of April, 1890.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

EXHIBIT No. 15 WITH PLEA AND ANSWER.

(Filed Feb'y 26th, 1896.)

STATE OF WEST VIRGINIA:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 15th day of December, 1890.

JOHN B. LAIDLEY
vs.
J. M. NOBLE, JENNIE PINE, WM. BISHOP, & THOS. McHAMLIN. } In Ejectment.

Be it remembered that heretofore, to wit, on the 3rd day of November, 1883, at rules held in the clerk's office of the circuit court of Cabell county, the plaintiff filed his declaration and notice against the defendants; which declaration, notice, and the sheriff's
593 return and rules thereon endorsed are in the words and figures following, to wit:

Declaration.

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

John B. Laidley, plaintiff, complains of J. M. Noble, Jennie Pines, and Wm. Bishop and Thos. McMamlin, defendant-, of a plea of trespass, for this: that, to wit, on the 1st day of February, 1882, the plaintiff was seized *with* an estate in fee and possessed of a certain tract of land situate, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east in part by Seventh street, formerly known as the Buehring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows:

Beginning at a stake, corner of lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, S. 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river,

S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by John B. Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendants afterwards, to wit, on the 1st March, 1882, entered into the same and unlaw-
594 fully withheld from the plaintiff the possession thereof, to the damage of the plaintiff $10,000.00, and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. Q.*

Notice.

To J. M. Noble, Jennie Pines, and Wm. Bishop, Thos. McHamlin:

You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law judgment will be given against you.

JOHN B. LAIDLEY, *P. Q.*

Sheriff's Return on Notice.

Executed the within declaration and notice on Jennie Pine by delivering to her an office copy of within this November 3rd, 1883, in Cabell county, W. Va.

E. KYLE, *S. C. C.*,
By E. S. BUFFINGTON, *Dept.*

Rules Endorsed.

1883, November rules.—Declaration and notice filed and service proved by the return of the sheriff as to Jennie Pine, and a rule is awarded the plaintiff against her to plead at the next rules.

1883, December rules.—The defendant- failing to appear and plead, judgment is given against them.

1890, November rules.—The plaintiff suggested the death of the defendant and sued out a *scire facias* against Ann Burns, A. D. Noble, Geo. Noble, Emmeretta Smith, and May Hall and all other unknown heirs of J. M. Noble, dec'd, returnable to Dec'r rules, and O. P. awarded against Geo. Noble, Emeretta Smith, and May
595 Hall, non-residents, and the unknown heirs of J. M. Noble, dec'd.

1890, December rules.—The *scire facias* having been duly served on the residents and the O. P. published and posted as to the non-resident and unknown defendants, it is ordered that this suit be reviewed and proceeded in against the heirs of J. M. Noble, dec'd.

The *scire facias* referred to in the foregoing rules is in the words and figures following, to wit:

State of West Virginia to the sheriff of Cabell county, Greeting:

Whereas in an action of ejectment lately depending in our circuit court for Cabell county between John B. Laidley, plaintiff, and J. M. Noble, Jennie Pines, William Bishop, and Thos. McHamlin, defendants, proceedings were so far had that issue was joined and the cause placed on the trial docket of said circuit court, and the cause being thus situated, the said J. M. Noble departed this life, leaving Amanda D. Noble, his wife, and Ann Burns, Geo. Noble, Emeretta Smith, Mary Hall, and others, whose names are unknown, as his heirs-at-law: therefore we command you that you make known to the said A. D. Noble, Ann Burns, Geo. Noble, Emeretta Smith, Mary Hall, and others, whose names are unknown, that they be before the judge of our said court, at the court-house thereof, at rules to be held in the clerk's office of said county, on the first Monday in December next, to show cause, if any they can, why the said action should not be proceeded in to final judgment according to law; and have then there this writ.

Witness T. W. Peyton, clerk of our said court, at the court-house of said county, the 5th day of November, 1890, and in the 28th year of the State.

T. W. PEYTON, *Clerk*,
By J. K. SALMON, *Dept.*

Sheriff's Return on Scire Facias.

Executed the within summons on A. D. Noble and Ann Burns on the 1st day of Dec., 1890, by delivering an office copy to
596 each of them in my county.

E. KYLE,
By I. T. STEWART,
Dept. S. C. C.

Affidavit for Order Publication.

STATE OF WEST VIRGINIA, *Cabell County*, } *To wit:*

This day Byron A. Wilcott personally appeared in said county before me, a notary public in and for said county and State, and made oath that George Noble, Emeretta Smith, and Mary Hall, against whom and others J. B. Laidley is about to sue out of Cabell county a writ of *scire facias* for the purpose of reviving against them and Amanda D. Noble and Ann Burns, as the known heirs of J. M. Noble, dec'd, and all others the unknown heirs of said Noble, a certain action of ejectment pending in the circuit court of said county, wherein said Laidley is plaintiff and the said J. M. Noble was plaintiff — death and others are now defendants, are non-residents of this State.

And he further made oath that he is the administrator of the estate of the said J. M. Noble, dec'd, and that the names of the heirs of the said Noble, except Geo. Noble, Emeretta Smith, Ann Burns, Amanda D. Noble, and Mary Hall, are unknown.

Given under my hand this 5th day of November, 1890.

C. B. HARROLD,
Notary Public.

Order Publication.

STATE OF WEST VIRGINIA:

At rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1890.

J. B. LAIDLEY, Plaintiff,
vs.
J. M. NOBLE ET AL. } In Ejectment.

The object of this suit is to recover of the defendant the possession of the following real estate, to wit: A certain tract of land situate in the city of Huntington, Cabell county, West Va., bounded on the north by the Ohio river, on the east in part by Seventh street, formerly known as the Beuhring lane, and extending beyond Fourpole creek on the south, containing 240 acres, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the
597 circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on partition of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker and by the latter sold and conveyed to the plaintiff.

And whereas it has been suggested on the record of said court that one of the defendants, J. M. Noble, died during the pending of said action and before verdict or judgment; and a writ of *scire facias* having been this day sued out of said clerk's office for the purpose of reviving said suit against Ann Burns, Amanda D. Noble, George Noble, Emeretta Smith, and May Hall, the heirs-at-law of the said J. M. Noble, and all others his unknown heirs; and affidavit having been made that the said Geo. Noble, Emeretta Smith, and May Hall are non-residents of the State of West Virginia; and affidavit having been also made that the names of the other heirs of the said J. M. Noble are unknown, the said defendants, non-residents as aforesaid, and all others the unknown heirs of the said J. M. Noble, are requested to appear here within one month after the date of the first publication of this order and show cause why said action of ejectment should not be revived against them, and do what is necessary to protect their interest in said suit.

Attest: T. W. PEYTON,
Cl'k C. C. C. C.,
By J. K. SALMON, *Dep'y.*

CAMPBELL & HOLT, *Att'ys.*

Publisher's Certificate.

HUNTINGTON, W. VA., *Dec'r 15th*, 1890.

I, C. L. Thompson, editor of the Huntington Advertiser, a weekly newspaper published at Huntington, Cabell county, West Va., hereby certify that the attached order publication was published in said newspaper four successive weeks beginning Nov. 5th, 1890.

C. L. THOMPSON.

598 And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 2nd day of January, 1884, there was an order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
J. M. NOBLE, JENNIE PINE, and THOS. McHAMLIN. } In Ejectment.

This day the defendants appeared, by Simms & Enslow, their attorneys, and moved to quash the motion in this action and demurred to the declaration, in which the plaintiff joined, and for further plea says that the defendants are not guilty of unlawfully withholding the premises claimed by the plaintiff in his declaration, and the plaintiff replies generally, and the defendants are allowed to file their disclaimer at the next term to a part of the said premises.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1885, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
J. M. NOBLE ET AL. } In Ejectment.

The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is ordered to be and is removed to the circuit court of Summers county, to be tried and determined according to law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in said court, which is in the words and
599 figures following, to wit:

JOHN B. LAIDLEY *vs.* CENTRAL LAND COMPANY.	In Ejectment.
SAME *vs.* SAME.	In Ejectment.
SAME *vs.* GEORGE PEKO.	In Ejectment.
SAME *vs.* MICHAEL O'BRIEN.	In Ejectment.
SAME *vs.* S. R. HALL.	In Ejectment.
SAME *vs.* JASPER JACKSON ET AL.	In Ejectment.
SAME *vs.* CATHERINE KNEFF.	In Ejectment.
SAME *vs.* A. L. WILLIAMS.	In Ejectment.
SAME *vs.* WILLIAM DUSTER.	In Ejectment.
SAME *vs.* S. F. JOBE.	In Ejectment.
SAME *vs.* ALBERT NAPIER.	In Ejectment.
SAME *vs.* ROB'T WOODSON ET AL.	In Ejectment.
SAME *vs.* J. M. NOBLE ET AL.	In Ejectment.
SAME *vs.* S. W. REMLEY.	In Ejectment.

SAME
vs.
C. F. REMLEY. } In Ejectment.

SAME
vs.
CLAY GREENWELL. } In Ejectment.

SAME
vs.
MARGARET SANDS. } In Ejectment.

SAME
vs.
S. J. LOVE ET AL. } In Ejectment.

SAME
vs.
E. T. MITCHELL. } In Ejectment.

SAME
vs.
R. T. HARVEY. } In Ejectment.

The foregoing nineteen cases having been remanded to this court from the circuit court of Summers county, on motion of plaintiff the same are now docketed and continued until the next term of this court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 15th day of December, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
J. M. NOBLE ET AL. } In Ejectment.

600 This action having been duly revived at the December rules, held in the office of the clerk of the circuit court of Cabell county, as to Amanda D. Noble, Ann Burns, George Noble, Emeretta Smith, and Mary Hall, the known heirs of J. M. Noble, dec'd, and all others his unknown heirs—

Now this day again came the plaintiff, by his attorneys, and thereupon came the defendants Amanda D. Noble, Ann Burns, George Noble, Emeretta Smith, and Mary Hall, by their attorneys, Gibson & Michie, and for plea say they are not guilty in manner and form as the plaintiff against them hath alleged, and of this they put themselves upon the country, and the plaintiff doth alike, and issue is joined.

And the defendants filed their claim for permanent improvements placed upon the land in controversy, and the plaintiff asked that the

value of his estate in the premises without the improvements may be also ascertained, which is accordingly ordered.

Thereupon came a jury, to wit, Thos. D. Beckett, T. J. Butcher, Joseph Berger, Harless Braley, Lewis Bryan, E. G. Blankenship, James Carter, J. C. Deason, R. P. Hensley, F. M. Jennings, Preston Keaton, and Lafayette Knight, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue *found* herein and a true verdict render according to the evidence, and the jury, having fully heard the evidence and arguments of counsel, retired to their room to consider of their verdict, and after some time returned into court and on their oaths do say:

"We, the jury, find for the plaintiff the following parcels of land, being a part of the land in the declaration mentioned, to wit, all those certain parcels of land situate in the city of Huntington and designated on a certain map of said city made by Rufus Coo-, surveyor, a lithograph copy of which was filed in the office of the recorder of Cabell county on the sixth day of December, 1871, as lots fifteen and sixteen, in block sixty-seven, on the north side of Third avenue between Sixth and Seventh streets, each thirty (30) by one hundred and forty feet deep to an alley, and also lot (10) ten, block sixty-seven (67), on the south side of Second avenue,
601 thirty by one hundred and forty feet deep to an alley, and that the plaintiff has an estate in fee-simple. We further find that the value of the plaintiff's estate in said premises, without the improvements, is $750.00 for lot 15, $600.00 for lot 16, and $450.00 for lot 10, and after setting off the amount allowed the plaintiff for the annual value of said premises against the amount allowed the defendants for improvements, we find for the defendant the balance of $2,500.00 for lot 15, $2,500.00 — lot 16, and $2,000.00 for lot 10."

And thereupon the said plaintiff, by his attorneys, elected to relinquish his estate in the premises to the defendants at the value so ascertained.

It is therefore considered by the court that the defendants henceforth hold all the estate that the said plaintiff had in the premises at the time of the institution of this action, provided they pay therefor the sum of $750.00, the value of his said estate in lot No. 15, in manner aforesaid assessed; and also the sum of $600.00, the value of said estate in lot No. 16, assessed as aforesaid; and the sum of $450.00, the value of his estate in lot No. 10, assessed as aforesaid, with interest on each of said sums from date.

And it is further ordered by the court that the plaintiff recover of the defendants his costs by him expended in the prosecution of this action, including $10.00 as allowed by statute.

And it is ordered that the said sums and each of them, with interest, as aforesaid, shall be paid on or before the expiration of 30 days from the rising of this court, and if the said sums or either of them be not so paid to the said plaintiff, then C. W. Campbell, who is hereby appointed a special commissioner for the purpose, shall, after having advertised the time, terms, and place of sale for four successive weeks in the Weekly Advertiser, a newspaper published in the county of Cabell, and by posting the same on the front door of the

court-house for at least 20 days before the day of sale, sell all three lots in the verdict described, in case neither of said sums and its interest has been paid, as aforesaid, or in case some of them have been paid, then only such lot or lots as is represented by the sum so unpaid, to the highest bidder at public auction for cash.

But said commissioner, before acting hereunder, shall enter
602 into bond before the clerk of this court, with security to be approved by him, in the penalty of $1,500.00, and conditioned according to law.

STATE OF WEST VIRGINIA, *County of Cabell,* } *To wit:*

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that — the record and proceedings made and had in a cause lately determined in said circuit court, wherein John B. Laidley was plaintiff and E. J. M. Noble, Jennie Pine, Wm. Bishop, and Thos. McHamlin *was* defendant-.

Given under my hand this 21st day of April, 1890.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

EXHIBIT NO. 16 WITH PLEA AND ANSWER.

(Filed Feb'y 26th, 1896.)

STATE OF WEST VIRGINIA:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 17 day of December, 1890.

JOHN B. LAIDLEY
vs.
E. T. MITCHELL. } In Ejectment.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed his declaration and notice against the defendant, which, together with the sheriff's return and the rules thereon endorsed, are in the words and figures following, to wit:

Declaration.

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

603 John B. Laidley, plaintiff, complains of E. T. Mitchell, defendant, of a plea of trespass, for this: that, to wit, on the 1st day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the

city of Huntington, county of Cabell, State of West Virginia, bounded on the north by the Ohio river, on the east in part by Seventh street, formerly known as the Beuhring lane, and extending beyond Four-pole creek on the south, containing 240 acres, and more particularly described as follows: Beginning at a stake, corner of lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 3 poles and six links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, south 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to a chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1883, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendant afterwards, to wit, on the 1st day of March, 1882, entered into the same and unlawfully withholds from the plaintiff the possession thereof, to the damage of the plaintiff of $10,000, and therefore he brings his suit, &c.

JOHN B. LAIDLEY, *P. P.*

Notice.

To E. T. Mitchell:

604 You are hereby notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law judgment will be given against you.

JOHN B. LAIDLEY, *P. P.*

Sheriff's Return.

I served the within declaration and notice by giving a true copy thereof to E. T. Mitchell on the 3rd day of November, 1883.

E. KYLE, *S. C. C.*,
By E. S. BUFFINGTON, *Dep-ty.*

Rules Endorsed.

1883, November rules.—Declaration and notice filed and service proved by the sheriff's return endorsed thereon, and a rule is awarded

the plaintiff against the defendant to appear and plead at the next rules.

1883, December rules.—The defendant failing to appear, is is ordered that his default be entered and that judgment be entered for the plaintiff.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 2nd day of January, 1884, there was an order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
E. T. MITCHELL. } In Ejectment.

This day the defendant, E. T. Mitchell, appeared, by his attorneys, Simms and Enslow, and moved to quash the notice in this action and demurred to the declaration, in which the plaintiff joined, and for further plea says that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff in his declara-
605 tion, and the plaintiff replies generally, and the defendant is allowed to file his disclaimer at the next term to part of the said premises.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 28th day of March, 1887, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
E. T. MITCHELL. } In Ejectment.

The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is ordered to be removed to the circuit court of Summers county, to be tried and determined according to law.

And on another date, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. OF W. VA. } In Ejectment.

SAME
vs.
SAME. } In Ejectment.

	SAME *vs.* GEORGE PEKO.	In Ejectment.
	SAME *vs.* MICHAEL O'BRIEN.	In Ejectment.
	SAME *vs.* S. R. HALL.	In Ejectment.
	SAME *vs.* JASPER JACKSON ET AL.	In Ejectment.
	SAME *vs.* CATHERINE KNEFF.	In Ejectment.
	SAME *vs.* A. L. WILLIAMS.	In Ejectment.
	SAME *vs.* WILLIAM DUSTER.	In Ejectment.
	SAME *vs.* S. F. JOBE.	In Ejectment.
	SAME *vs.* ALBERT NAPIER.	In Ejectment.
	SAME *vs.* ROB'T WOODSON ET AL.	In Ejectment.
606	JOHN B. LAIDLEY *vs.* CENTRAL LAND CO. OF W. VA.	In Ejectment.
	SAME *vs.* J. M. NOBLE ET AL.	In Ejectment.
	SAME *vs.* S. A. REMLEY.	In Ejectment.
	SAME *vs.* C. F. REMLEY.	In Ejectment.

SAME *vs.* CLAY GREENWELL.	In Ejectment.
SAME *vs.* MARGARET SANDS.	In Ejectment.
SAME *vs.* S. J. LOVE ET AL.	In Ejectment.
SAME *vs.* E. T. MICHELL.	In Ejectment.
SAME *vs.* R. T. HARVEY.	In Ejectment.

The foregoing nineteen cases having been remanded to this court from the circuit court of Summers county, on motion of plaintiff the same are now docketed and continued until the next term of this court.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 17th day of December, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY *vs.* E. F. MITCHELL.	In Ejectment.

This day came the plaintiff, by his attorney, and it appearing to the court that the said E. T. Mitchell has departed this life intestate, leaving as his only children and heirs-at-law A. P. Mitchell, Samuel Mitchell, and Fannie Pennybacker, formerly Mitchell, him surviving, it is therefore ordered that his death be suggested on the record; and thereupon came the said A. P. Mitchell, Sam'l Mitchell, and Fannie Pennybacker, by Gibson and Michie, their attorneys, and moved the court that said action be revived against them as the heirs-at-law of said E. T. Mitchell, deceased, and, there being no objection thereto, it is ordered by the court that the said action be, and the same is hereby, revived against the said heirs and to be hereafter proceeded in to a final judgment in their names as defendants.

607 Thereupon the said A. P. Mitchell, Samuel Mitchell, and Fannie Pennybacker, for plea in this behalf, say they are not guilty in manner and form as the said plaintiff in his declaration hath al-eged, and of this they put themselves upon the country, and the plaintiff doth alike.

And the said defendants filed their claim for improvements placed upon the said land in the declaration mentioned, and the said plaintiff asked for the value of his estate in the premises be also ascertained, which is accordingly so ordered.

Thereupon came a jury, to wit: T. J. Butcher, Joseph Berger, Harless Braley, R. P. Hensley, Jas. A. Meadows, Jr., R. B. Malcolm, D. L. Perry, R. J. Roberts, Wm. Sunderland, Hooper Stephens, Harvey Templeton, and John T. Yates, who wer- drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein and a true verdict render according to the evidence, and the jury, having fully heard the evidence and arguments of counsel, retired to their room to consider of their verdict, and after some time returned into court and on their oaths do say: "We, the jury, find for the plaintiff, John B. Laidley, the following-described parcel of land, being a part of the land in the declaration mentioned, to wit, all those certain lots of land situate on the south side of Second avenue between 6th and 7th streets, in the city of Huntington, and described on a certain map of said city made by Rufus Cook, surveyor, a lithograph copy of which was filed in the recorder's office of Cabell county on the sixth day of December, 1871, and designated thereon as lot Nos. 13 and 14, in block No. 67, each being thirty feet deep to an alley, and that the plaintiff has an estate in fee-simple therein.

We further find that the value of the plaintiff's estate therein without the improvements is $1,300.00; also, after setting off the amount allowed the plaintiff for the annual value of said premises against the amount allowed the defendants for improvements, we find for the defendants the sum of $1,000.00."

And thereupon the said plaintiff, by his attorney, elected to relinquish his estate in the premises to the defendant- at the value so ascertained.

It is therefore considered by the court that the said de-
608 fendants henceforth hold all the estate that the plaintiff had in said premises above described at the commencement of this action, provided they pay therefor the said sum of $1,350.00, the value of the said estate, in the manner aforesaid assessed, with interest thereon from this date until paid, and the costs by the plaintiff about the prosecution of his action expended, including $10.00 allowed by statute.

It is further considered by the court that unless the said defendants pay the said sum of $1,350.00, with interest and costs aforesaid, within thirty days from the rising of this court, then the court doth order the said lots 13 & 14 to be sold at public auction to the highest bidder, at the front door of the court-house, on the terms of one-half of the purchase-money cash in hand on day of sale and the residue thereof in six months, the purchaser giving his note for the deferred payment, bearing interest, with good personal security, and the legal title to be retained as further security.

And the court doth appoint John H. Holt and C. W. Campbell as special commissioners for the purpose and with direction and power to make said sale under this order; but before acting they

shall give bond in the penalty of $1,000.00, with good personal security, to be approved by the clerk of this court and conditioned as required by law.

They shall advertise the time, place, manner, and terms of such sale by publication thereof once a week *fro* four successive weeks in the Huntington Advertiser, a weekly newspaper published in this county, and posting a copy of such notice on the front door of the court-house for at least 20 days prior to day of sale, and report their actions to this court for approval or rejection.

STATE OF WEST VIRGINIA, *County of Cabell,* } *To wit:*

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings made and had in a cause lately determined in said circuit court, wherein John B. Laidley was plaintiff and E. T.
609 Mitchell was defendant.

Given under my hand this 21st day of April, 1891.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

EXHIBIT NO. 17 WITH PLEA AND ANSWER.

(Filed Feb'y 26th, 1896.)

(The above-mentioned Exhibit No. 17 is not now found among the papers in my said office.—Clerk.)

610 And at another day, to wit, on the 27th day of February, 1896, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia,
vs.
JOHN B. LAIDLEY and Others. } In Equity.

This day this cause came on to be further heard upon the bill and exhibits and the amended and supplemental bill and exhibits filed therewith, and, upon motion of the defendants, John B. Laidley and others, and for reasons appearing to the court, they have leave to and do withdraw their demurrers to this bill, amended and supplemental bill; and thereupon came John B. Laidley, W. S. Laidley, trustee; Thos. J. Bryan, James F. Brown, Wm. E. Chilton, Mary E. Chilton, C. W. Campbell, F. L. Doolittle, R. A. Goodwin, Geo. F. Donnella, James Prichard, C. E. Guinn, O. E. Guinn, W. W. Guinn, Rufus Switzer, Garland Buffington, Lillie Handley, W. R. Gunn, W. H. H. Holswade, L. D. Isbell, Oscar Jones, Miriam Laidley, Lizzie Montgomery, James K. Oney, Gordon O'Bierne, J. D. Terrell, John T. Wilson, Thos. H. Harvey, R. T. Harvey, J. E. Erwin, N. Smith, and

Vesta Laidley and filed their joint and separate plea and answer to the plaintiff's amended bill of complaint; and, on motion of the plaintiff, by his attorneys, he has sixty days from this date in which to file his exceptions to said plea and answer, or to set same down for hearing, or to file his replication thereto, as he may be advised; which said exceptions, notice of hearing, or replication shall be filed with the clerk of this court.

(The plea and answer referred to in the foregoing order are hereinbefore copied, having been endorsed: Filed February 26, 1896.—Clerk.)

611 And at another day, to wit, on the 24th day of April, 1896, the following order was made and entered of record, to wit:

COLLIS P. HUNTINGTON, as Receiver of the Central Land Company of West Virginia, Complainant,
against
JOHN B. LAIDLEY ET ALS., Defendants.

Upon the amended bill of complaint in the above cause and the so-called plea and answer filed therein on the 26th day of February, 1896, and upon all the pleadings and proceedings in said cause the defendants therein or their solicitors are hereby ordered to show cause, on the 16th day of June, 1896, at ten o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, at the court-rooms of said court, at the city of Parkersburg, West Virginia, why the so-called plea and answer filed on the 26th day of February, 1896, should not be stricken from the files as irregular and ineffective and as not being in conformity with the rules and practice of this court, for the reason that, among others, having pleaded to the whole amended bill herein, the defendants have nevertheless answered all or portions of the amended bill in the cause, and why the complainant should not be allowed, within such a time as the court should prescribe therefor, to further amend his bill of complaint in said cause as he may be advised, or why he should not have such other and further order or relief in the cause as may be equitable and proper.

And it is further ordered that the time of the complainant to take issue upon such plea, or to set the same down for argument, or to file a replication to said answer, or take such other proceedings in respect thereto as he may be advised, be, and the same is hereby, extended until the hearing and determination of the motions to be made under this order and the further order of the court.

612 And it is further ordered that a service of a copy of this order to show cause upon the solicitors of the defendants on or before the 16th day of June, 1896, be sufficient.

Petition of C. P. Huntington. (*Filed April* 24, 1896.)

To the honorable the circuit court of the United States for the district of West Virginia, at Parkersburg:

Your petitioner, Collis P. Huntington, as receiver of the Central Land Company of West Virginia, would most respectfully move your honorable court to allow him to amend the amended bill filed by him in the cause of himself as receiver of the Central Land Company of West Virginia against John B. Laidley and others, and in support of this motion he files herewith an affidavit of Maxwell Evarts, one of the attorneys for him as plaintiff, who prepared the said bill, showing the *the* matter intended to be inserted was inadvertently omitted.

He also moves the court for an order against the defendants to show cause why the said amendment should not be made any why the so-called plea and answer of the defendants filed on the 26th day of February, 1896, should not be stricken from the files as irregular and ineffective and as not being in conformity with the rules and practice of this court.

And he also prays that the time of the complainant to take issue upon such plea, or to set the same down for argument, or to file a replication to said answer, or to take such other proceedings in respect thereto as he may be advised, be, and the same is hereby, extended until twenty days after the hearing and determination of the motions to be made under this petition; all of which relief your petitioner respectfully prays may be granted him.

613 C. P. HUNTINGTON,
Special Receiver, &c.,
By SIMMS & ENSLOW, *Att'ys.*

United States Circuit Court, District of West Virginia.

COLLIS P. HUNTINGTON, as Receiver of the Central Land Company of West Virginia, Complainant,
against
JOHN B. LAIDLEY ET ALS., Defendants.

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

Maxwell Evarts, being duly sworn, deposes and says: I am one of the counsel for the complainant in the above-entitled suit. I have examined the so-called plea and answer filed by the defendants herein on the 26th day of February, 1896, and I have advised the complainant and verily believe that the so-called plea and answer does not conform to the rules and practice of this court for the reason that the defendants have thereby pleaded to the whole bill, and, notwithstanding their plea to the whole bill, have also answered the bill or porations thereof; and such so-called plea and answer are

wholly irregular and ineffective and should be stricken from the files of the court, and the complainant desires to move that such so-called plea and answer should be stricken from the files.

The complainant herein, upon examining the amended bill of complaint since the filing thereof, has ascertained that a material allegation intended to be inserted in said amended bill of complaint has been inadvertently omitted therefrom, and desires leave of the court to amend his amended bill of complaint within such time as the court should prescribe therefor.

MAXWELL EVARTS.

614 Subscribed and sworn to before me this 20th day of April, 1896.

RICHARD C. LORCH,
[NOTARIAL SEAL.] *Notary Public, N. Y. Co.*

And at another day, to wit, on the 16th day of June, 1896, the following order was made and entered of record, to wit:

COLLIS P. HUNTINGTON, Receiver, &c.,
vs.
JOHN B. LAIDLEY & Others. } In Equity.

By agreement of the parties to this case it is set down for hearing, at Charleston, on November 24th, 1896.

Stipulation.

(Filed June 16th, 1896.)

In the Circuit Court of the United States for the District of West Virginia, at Parkersburg.

C. P. HUNTINGTON, Receiver, etc.,
vs.
JOHN B. LAIDLEY ET ALS. } In Equity.

It is hereby agreed that the hearing of this cause upon the motion, already set for hearing on the 16th day of June, 1896, at Parkersburg, may be fixed for any time that will suit Judges Goff and Jackson to be present at such hearing, and when they shall fix the day that will suit their convenience for such hearing it will be sufficient notice thereof for the clerk of the court to mail notice thereof to W. E. Chilton, at Charleston, and Simms & Enslow, at Huntington, ten days before the day set for the hearing of said motion.

615 SIMMS & ENSLOW, *Atty's,*
For C. P. HUNTINGTON, *Sp'l Receiver.*
W. E. CHILTON, *For Def'ts.*

And at another day, to wit, on the 21st day of December, 1896, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia,
vs.
JOHN B. LAIDLEY ET AL. } In Chancery.

This cause, having been set down for hearing upon the motions made herein for November 24, 1896, and on that day continued until this 21st day of December, 1896, came on this day to be heard, at Parkersburg, on the motion to strike out the defendants' plea and answer filed and to amend the amended bill, and on said motion to amend, and for reasons appearing to the court, the plaintiff has leave to amend said amended bill by inserting in said amended bill, at the following places: 7th line, side page 39; 2 line, side page 47; 6 line, side page 83; 9 line, side page 84; 3 line, side page 84; 4 line, side page 85; 9 line, side page 85; 7 line, side page 90; 9 line, side page 96; 7 line, side page, 99; 1 line, side page 100; 10 line, side page 100; 4 line, side page 101; 10 line, side page 101, the words "as this complainant has learned since the filing of his original bill," and such amendment was thereupon made at bar by inserting the said words in said amended bill.

And to the bill as so amended the defendants who heretofore pleaded and answered filed the same plea and answer as heretofore filed, and to the said plea and answer so filed and as heretofore filed the plaintiff moved, as in manner and form he had heretofore moved,
to strike out said plea and answer, for the same reason and
616 on the same grounds as his motion heretofore made; and the
court, having partially heard the argument of counsel upon said motion to strike out said plea and answer to said amended bill, takes time to consider of its decision, with leave to plaintiff and defendants to file their brief, with citations of authorities, on or before January 4, 1897.

(The amendments referred to in the foregoing order are hereinbefore copies with the amended bill.—Clerk.)

And at another day, to wit, on the 31st day of March, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia,
vs.
JOHN B. LAIDLEY ET AL. } In Equity.

This the 31st day of March, 1897, this cause came on to be heard upon the plaintiff's motion to strike out the plea and answer of the defendant-, John B. Laidley and others, to the amended and supplemental bill; upon consideration whereof the court is of opinion to and doth overrule said motion.

Thereupon the plaintiff, by counsel, asked until May rules, 1897,

to take issue upon the plea, or plea and answer, or set the same down for argument, or file his replication to said answer or his exceptions thereto, as he may elect.

Upon consideration of said motion, the court doth adjudge that the plaintiff may, at May rules, 1897, take issue upon said plea or set the same down for argument, at his election. The court, being of opinion that the answer filed with said plea was filed only in support of said plea and not as an independent defense to said
617 amended and supplemental bill, doth overrule the plaintiff's application to except or reply to the same.

And this cause is set for hearing upon the 24th day of June, 1897, at Parkersburg.

Opinion of Judge Goff.)

(Filed March 31st, 1897.)

In the Circuit Court of the United States for the District of West Virginia, at Parkersburg.

COLLIS P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia, Complainant,
vs.
JOHN B. LAIDLEY ET AL. } In Equity.

Simms & Enslow, George C. Sturgiss, Maxwell Evarts, counsel for complainant; James F. Brown, J. H. Holt, Wm. E. Chilton, A. F. Mathews, counsel for defendants.

GOFF, *Circuit Judge:*

The amended bill in this cause was filed Jan. 26, 1894, and the plea and answer of the defendants on the 26th day of Feb., 1896. The case is now before the court on the complainant's motion to strike out the said plea and answer. The defendants allege in the plea that the complainant is estopped from raising the matters and things set forth in the bill because that most of them have been decided against the Central Land Company, of which com-
618 plainant is receiver, in certain suits heretofore determined in the State courts of West Virginia, the same being courts of competent jurisdiction and the judgments rendered therein being now unreversed and still in full force and effect, and also that the complainant, by said judgments, is equally concluded and prevented from raising all the other matters set forth in the bill. The defendants accompany the plea with an answer denying the allegations of fraud as set out in the bill and the facts on which the same are said to have been founded and asking for affirmative relief. Complainant insists that the plea goes to the whole of the amended bill, and that under our general chancery practice the same is overruled by the answer. The defendants claim that their pleading is justified by the 32nd equity rule, which reads as follows, viz: "The defendant may at any time before the bill is taken for confessed, or

afterwards with the leave of the court, demur or plead to the whole bill or part of it, and he may demur to part, plead to part, and answer as to the residue; but in every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea and explicitly denying the fraud and combination and the fact on which the charge is founded."

It will be noticed from an examination of the pleadings that the plea proper is to the entire bill, and that the answer, so far as it is responsive to the bill, is only a denial of the fraud and combination and the facts relating thereto specifically set forth in the bill. The defendants have thus availed themselves of their undoubted right to plead to the whole bill. If they had also answered the whole bill, then unquestionably the plea would have been thereby overruled. If such plea had contained in itself a full defence of the bill, and answer would have been unnecessary, and would have been
619 taken as a waiver of the plea. Ferguson *v.* O'Hara, Pet. C. C., 493; Fed. Cas., 4740; Sims *v.* Lyle, 4 Wash. C. C., 301; Fed. Cas., 12891. The plea in the case at bar professes to cover the whole bill, and therefore, under our general equity practice, an answer was not necessary, nor has one, in the sense that we use that word, *in* been filed. That part of the pleading which is called the answer is intended not as an answer to the entire bill, but it is tendered for the purpose of fortifying the plea and denying the fraud charged, and is filed under the requirements of the latter part of said rule 32. As a matter of course, the new matter alleged and the affirmative relief asked should not have been incorporated in the pleading, which should have been confined to the purposes mentioned in said rule. That which was so improperly introduced into the pleading will be considered as surplusage or stricken out, as may hereafter be deemed best.

If the plea is good, it disposes of the allegations of fraud set forth in the bill concerning the deed made by Sarah H. G. Pennybacker to John B. Laidley which were raised in the pleadings and disposed of by the judgments rendered in the suits brought and decided in the courts of the State of West Virginia, and it does so by virtue of its power and effect as a plea of "*res adjudicata*," and consequently it was not required that such allegations should be specially denied in the plea filed in this cause, as the object of the bill is to set said deed aside for the frauds said to have been committed preceeding the rendition of the judgments so pleaded in bar, and no charge of fraud is made as to the obtaining of said judgments, it being kept in mind in this connection that the answer filed in support of the plea denies the charges of fraud pertaining to the other matters as to which the plea claims that the complainant is also concluded.
620 In this case the defendants interposed no demurrer to this amended bill or to any part thereof, nor did they plead to part and answer as to the residue, but they pleaded to the whole bill, and as the bill specially charged fraud, and the rule required that in every case of that character a plea to such part should be accompanied with an answer fortifying the plea and denying the

fraud and combination alleged, as also the facts on which the fraud was founded, such answer was made a part of the pleading. This, we think, was proper, and to hold otherwise would be to deny to defendants the right to file a plea in a case in which fraud was charged unless the plea applied to a part only of the bill. Such construction of the rule mentioned is not, in our opinion, justified by the language of the same nor warranted by the practice under it; but it must be understood that the answer so accompanying the plea will be restricted to the purpose of denying the fraud and combination charged, and that it cannot in the further proceedings of this cause be put to any other use.

Rule 37, equity practice, referred to by counsel in argument, does not apply to this case, as the plea here extends to the whole bill. If the plea had applied to a part only, and an answer had been filed to the residue, which also extended in part to some matter covered by the plea, then that rule would have saved the plea, in the absence of other objections that the answer had reference to some part of the same matter as was covered by the plea. In other words, that rule only applies in cases where the demurrer or plea extends to only a part of the bill and the answer is intended to cover the residue. Under the practice as it existed previous to the adoption of this rule, if the plea was to a part only and the answer to the remainder, and such answer by inadvertence or otherwise referred to the matters covered by the plea, the effect was to overrule
621 the latter. The 37th rule was evidently intended to change that practice, as a careful examination of its provisions will show. It reads as follows: "No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea."

The motion to strike out the plea and answer must be overruled. The effect they are to have, or the disposition that may be made of them, treating them as a part of the record of this cause, is yet to be determined.

NATHAN GOFF,
U. S. Circuit Judge.

March 31st, 1897.

And at the same day, to wit, on the 31st day of March, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Sp'l Receiver, &c.,
vs.
JOHN B. LAIDLEY ET AL. } In Equity.

This day came the defendant John B. Laidley and tendered a notice of a motion to dissolve the injunction awarded in this cause, and said notice is ordered to be filed, and the motion to dissolve said injunction is set down for hearing on the 24th day of June, 1897, at Parkersburg. A copy of said notice and this order shall be served on the plaintiff, C. P. Huntington, sp'l receiver, within

thirty days from this date. It is further considered by the court that a service of said copies upon Mess. Simms or Enslow, attorneys for the plaintiff, shall be deemed a sufficient service upon said plaintiff.

622 *Notice of John B. Laidley.*

(Filed March 31st, 1897.)

C. P. HUNTINGTON, Special Receiver, *vs.* JOHN B. LAIDLEY ET AL. } In Equity.

To C. P. Huntington, special receiver, plaintiff in the above-styled cause:

You will please take notice that on the 31st day of March, 1897, at Parkersburg, I shall move the circuit court of the United States for the district of West Virginia to dissolve the injunction awarded in the above-styled cause, wherein I was enjoined from proceeding to take possession of the 240-acre Pennybacker tract of land which is fully mentioned and described in the plaintiff's bill.

The ground upon which said motion will be based is that the court had no jurisdiction to grant said injunction or restraining order, as appears from the face of the record in the cause as now made up.

And I shall insist upon a hearing of said motion upon that day.

Very respectfully, JOHN B. LAIDLEY.

VINSON & THOMPSON, *Sols.*

Service accepted, to have the same, and no other, effect than if served upon us as attorney-.

March 27, '97, 2.40 p. m.

SIMMS & ENSLOW, *Att'ys.*

Copy of Order for Service.

At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in said district, on the 31st day of March, 1897, the following order was made
623 and entered of record, to wit:

C. P. HUNTINGTON, Sp'l Receiver, &c., *vs.* JOHN B. LAIDLEY ET AL. } In Equity.

This day came the defendant John B. Laidley and tendered a notice of a motion to dissolve the injunction awarded in this cause, and said notice is ordered to be filed, and the motion to dissolve said injunction is set down for hearing on the 24th day of June, 1897, at Parkersburg. A copy of said notice and this order shall be served on the plaintiff, C. P. Huntington, sp'l receiver, within thirty days from this date. It is further considered by the court

that a service of said copies upon Mess. Simms or Enslow, attorneys for the plaintiff, shall be deemed a sufficient service upon said plaintiff.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 31st day of March, 1897, in the equity cause of C. P. Huntington, sp'l rec'r, &c., *v.* J. B. Laidley *et al.*, therein pending.

Given under my hand and seal of said court, at Parkersburg, in said district, this 3d day of April, 1897.

[SEAL.] L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

(Endorsed:) Not executed. No arrangements made for payment of marshal's fees and costs. Charles E. Wells, U. S. marshal.

624 *Notice of C. P. Huntington, Rec'r.*

(Filed May 14th, 1897.)

To John B. Laidley:

You will take notice that the plaintiffs in the case of C. P. Huntington, special receiver, against yourself and others, in chancery, now pending in the circuit court of the United States for the district of West Virginia, will set down the plea and answer for argument on June 24th, at Parkersburg, West Virginia, according to the order of the court heretofore made and entered.

C. P. HUNTINGTON,
Sp'l Receiver.

Service accepted.
May 1, '97.

JOHN B. LAIDLEY.

And at another day, to wit, on the 12th day of July, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Special Receiver, &c., *vs.* JOHN B. LAIDLEY ET AL. } In Chancery.

This day this cause came on to be heard upon the plea of the defendant-, John B. Laidley and others, of "*res adjudicata*," heretofore filed and set down for argument, and the court, having heard the argument of counsel on said plea and fully considered the questions arising thereon, is of the opinion that the said plea as a plea to the whole bill as amended is not a proper plea, and that the same should be rejected.

It is therefore adjudged, ordered, and decreed that said plea of "*res adjudicata*" be, and the same is, overruled; and the defendants

have leave to answer the plaintiff's bill and amended bill on or before the next rule day.

625 And at the same day, to wit, on the 12th day of July, 1898, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Special Receiver,
vs.
JOHN B. LAIDLEY ET AL. } In Chancery.

This day this cause came on to be heard upon the motion of the defendant-, John B. Laidley and others, to dissolve the injunction and dismiss the restraining order heretofore awarded herein, and the court, having heard the argument of counsel and fully considered the questions raised, are of the opinion that the said injunctions be continued until the further order of the court. It is therefore ordered that said defendants' motion to dissolve said injunctions be, and the same is, overruled.

And at another day, to wit, on the 13th day of July, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Special Receiver,
vs.
JOHN B. LAIDLEY ET AL. } In Equity.

The defendant- moved the court for the appointment of a receiver in this cause; which motion is overruled.

And at the same day, to wit, on the 13th day of July, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia,
vs.
JOHN B. LAIDLEY and Others. } In Equity.

The defendant John B. Laidley this day tendered his plea
626 to part of the plaintiff's amended bill and his answer as to the residue filed, and asked leave to file the same as a full defense to said amended bill, and, upon motion of the plaintiff, by counsel, he has leave until September rules to make up the issue upon said plea and answer.

Plea and Answer.

(Filed July 13th, 1897.)

In the Circuit Court of the United States for the District of West Virginia, Sitting at Parkersburg.

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia, a Corporation, Plaintiff,
vs.
JOHN B. LAIDLEY and Others, Defendants.
} In Chancery.

To the honorable the judges of said court:

The joint and separate plea of John B. Laidley to the amended bill of complaint filed in said court by C. P. Huntington, special receiver, against them and others.

By protestation, not confessing any of the matters and things to be true in manner and form as the plaintiff hath alleged in his said amended bill, for plea thereto the defendants say the plaintiff ought not to be heard to allege against them, as he hath done in his amended bill, that the Central Land Company of West Virginia, at the date of his appointment as special receiver for said company, to wit, on the 16th day of December, 1890, had right of possession in said amended bill.

627 Because they say that heretofore, to wit, at April rules, 1882, said John B. Laidley filed his declaration in ejectment in the clerk's office of the circuit court of Cabell county, State of West Virginia, against the Central Land Company of West Virginia, and thereby instituted his action of ejectment in said court against said company to recover possession of an estate in fee-simple in said tract of land. Said company afterwards filed its plea of not guilty to said declaration in said court, upon which plea issue was joined and a trial of said action was had in said court in December, 1884, which resulted in a verdict for said company in pursuance with instructions given to the jury by the court; and judgment was rendered by said court upon said verdict in favor of said company against said Laidley. Before the jury the said company relied in support of its title upon the four deeds exhibited with the plaintiff's said amended bill, marked "Exhibit (A)," "Exhibit (B)," "Exhibit (C)," "Exhibit (D)," respectively, and upon its possession under said deeds; and in support of his title, said Laidley relied upon the deed exhibited with said plaintiff's amended bill, marked "Exhibit (F)," and said Laidley moved the court to instruct the jury that the deed above described as "Exhibit B" was null and void, so far as it affected the estate and interest of S. H. G. Pennybacker in said land; which motion the court refused.

Upon the petition of said John B. Laidley, the supreme court of appeals of West Virginia, on the 23d day of October, 1886, awarded

a writ of error to the judgment aforesaid, and on the 27th day of November, 1887, upon the final hearing on said petition, said supreme court declared said deed, "Exhibit (B)," being the deed
628 of John M. Pennybacker and S. H. G. Pennybacker to C. P. Huntington, bearing date the 25th day of February, 1870, null and void, so far as it purports to convey the estate of S. H. G. Pennybacker in said land, and reversed said judgement, set aside said verdict and awarded a new trial of said action. Said supreme court in its opinion and judgement on said writ of error declared that the legal effect of said deed was to vest a freehold estate in John M. Pennybacker for the lives of himself and Sarah H. G. Pennybacker, and a remainder in fee-simple in said S. H. G. Pennybacker, upon the death of her husband, J. M. Pennybacker, and that said deed did not vest a separate estate in the said S. H. G. Pennybacker. Said judgement of the said supreme court remains in full force and effect, unreversed or set aside, and is conclusive upon the matters therein decided between said John B. Laidley and the said Central Land Company, and their privies and the plaintiff, C. P. Huntington, special receiver.

On the 12th day of September, 1890, upon the new trial of said action, a verdict was returned by the jury in favor of said John B. Laidley against said Central Land Company for an estate in fee-simple in said land, as described in the surveyor's report, and judgement was rendered by said circuit court of Cabell county, according to the verdict of the jury—for an estate in fee-simple in the said land, as described in the said report, which judgement remains in
629 full force and effect, unreversed or set aside, and by the statute of the State of West Virginia is made conclusive between the parties to said action, and all persons claiming under and asserting the same title and possession involved in said action.

The defendants aver that before the jury at said trial the defendant John B. Laidley, and plaintiff in said action, in support of his title, relied upon the deed executed by S. H. G. Pennybacker to him, said J. B. Laidley, bearing date the 26th day of January, 1882, a copy of which is filed with plaintiff's amended bill marked "Exhibit (F)," and the said Central Land Company of West Virginia, defendant in said action, in support of its title relied upon three deeds, to wit: a deed purporting to be executed by S. H. G. Pennybacker and John M. Pennybacker to C. P. Huntington, bearing date the 25th day of February, 1870; second, a deed executed by Albert Laidley and Vesta Laidley to C. P. Huntington, bearing date the 13th day of April, 1870; third, a deed executed by C. P. Huntington to said Central Land Company of West Virginia, bearing date the 16th day of October, 1871; copies of which three several deeds are filed with plaintiff's amended bill, marked "Exhibit (B)," "Exhibit (C)," and "Exhibit (D)," respectively. Both parties to said action relied upon the title of S. H. G. Pennybacker, derived by deed from Rebecca J. Everett, bearing date the 18th day of August, 1865. Said deed was in evidence before the jury, a copy of which is also exhibited
630 with plaintiff's amended bill, marked "Exhibit (A)." The court, after the evidence was in, instructed the jury that the

deed described above as "Exhibit (B)" was null and void as to S. H. G. Pennybacker, and did not convey her estate in the lands in controversy to C. P. Huntington, and the jury found a verdict as aforesaid in favor of said Laidley.

The defendants say that afterwards and pending said action of ejectment, the said Central Land Company of West Virginia instituted its suit in chancery against said J. B. Laidley, C. P. Huntington, and others, in the circuit court of Cabell county, State of West Virginia, and, to wit: at June rules, held in the clerk's office of said court, on the first Monday in June, in the year 1887, filed its bill of complaint in said suit.

That in said bill of complaint the said company alleged that R. J. Everett being seized in fee of a tract of 240 acres of land, situate in Cabell county, on the 18th day of August, 1865, sold and conveyed the same to S. H. G. Pennybacker. That on the 25th day of February, 1870, S. H. G. Pennybacker sold and conveyed the same to C. P. Huntington for $11,000. That her husband, John M. Pennybacker, joined in said deed. That on the 16th day of October, 1871, C. P. Huntington sold and conveyed the same to said company. That on the 13th day of April, 1870, Albert Laidley, the father, and his wife, the mother of defendant John B. Laidley, conveyed all of
631 Albert Laidley's interest in said land to C. P. Huntington; that C. P. Huntington and his grantee, the land company, held under the said deeds to Huntington open, actual, adverse, and exclusive possession of the land; that on the 26th day of January, 1882, after the death of Jno. M. Pennybacker, defendant John B. Laidley, with full notice of the land company's equities, procured from S. H. G. Pennybacker a deed of conveyance to him of said tract for $500; that said Laidley, a practicing attorney, *ex mero motu*, endeavored to induce said Sarah Pennybacker to commence suit against the then owners, informing her that she had an interest in or claim to the same for a fee of one-half of the recovery; that she refused the offer, and refused to bring suit, saying she and her husband had sold the land to Huntington for $11,000, had received the money and made no claim to the land; that afterwards Laidley informed her that her interest was a dower interest and offered her $500 for it, which she accepted; received $100 cash and discounted Laidley's note of $400 for $225; that in July, 1872, Sarah H. G. Pennybacker filed her bill in chancery against her husband John M. Pennybacker and others, in which she recognized her sale to Huntington of the 240 acres now here in controversy and had the same declared, by decree therein, her sole and separate property; that on the 20th day of February, 1874, said S. H. G. Pennybacker conveyed to
632 Warren J. Parsons the one acre reserved in her deed to Huntington, and therein recognizes her sale to Huntington; that by virtue of said several deeds and said actual possession, and said decree, and Laidley's notice of all said facts, the company's title was valid in law and equity, and J. B. Laidley took nothing by his deed; that the same is a cloud on the company's title; that at the date of Laidley's deed, the land was worth $30,000 by reason of improvements put by the company on the land and adjoining lands; that

said deed was procured by Laidley by fraud, imposition, misrepresentation and concealment; that the consideration was inadequate; that she was induced to believe she was conveying her dower interest only; that he concealed from her that she had a fee-simple, if any interest; that Laidley purchased with intent of bringing suit against the true owners and to defraud them; that she and her husband were insolvent and not liable on their warranty; that having used the purchase-money, she was estopped to assert her claims, and Laidley being a purchaser with notice is also estopped; that by reason of the facts alleged, Laidley, if he took the legal title, he held it as trustee for the company, the latter having acquired the superior equity; that Laidley has pending in supreme court of appeals of the State of West Virginia in writ of error an action of ejectment against the company, in which the validity of the S. H. G. Pennybacker deed to C. P. Huntington is in issue, and if it be held
633 void and Laidley holds the legal title, he holds it as trustee for the company; and in that event, the prayer of the bill was that said Laidley be compelled to convey the legal title to said company and those holding under it. On the other hand, if said deed be held valid, that Laidley's deed be set aside as a cloud upon the title, and if entitled to neither relief, that the $11,000 purchase-money be charged on the land for the benefit of the company; and that Laidley be enjoined from prosecuting his actions in ejectment against the company and its grantees until the matters above alleged can be determined in equity, and for general relief.

And the defendants say that at the following rule day, to wit: at rules held in said clerk's office on the first Monday in July, in the year 1887, the said John B. Laidley filed his separate answer to said bill of complaint, and in said answer the defendants say that he, the said John B. Laidley, denied the alleged superior equities of said company set up in said bill; denied that he, said Laidley, held said land as trustee for the use and benefit of said company; denied the said company's alleged equity to call on him for a conveyance to it of his legal title; denied that he bought said land with intent to defraud said land company or its grantees, out of the same; denied that the said company had an equity to charge the $11,000 purchase-money paid by C. P. Huntington as a lien upon said land; denied that the consideration paid by said Laidley was inadequate;
634 denied that S. H. G. Pennybacker, or that he, said Laidley as her grantee, was liable legally, equitably or morally to be charged personally with said $11,000; denied that S. H. G. Pennybacker, or he, said Laidley, her grantee, was estopped by said void deed to C. P. Huntington, by any warranty therein or by any act or word of hers in relation to said land, from asserting title thereto; or that she, or he, said Laidley as her grantee, was estopped by her recognition of her sale to C. P. Huntington in her bill filed in 1882 against her husband, to recover certain property and have it declared her separate estate; denied that her interest in the land in controversy was her sole and separate estate; denied that her title or right of action was barred by adversary possession; denied that Albert Laidley ever had any right, title or interest by purchase or otherwise in the estate

of S. H. G. Pennybacker; denied that he, J. B. Laidley, had any actual knowledge of the matters and things alleged in the Central Land Company's said bill other than what he derived from the records in the county court clerk's office; denied that at the time of his purchase he made any false or fraudulent representation to Mrs. Pennybacker about her title, estate or interest in said land; denied that he concealed from her the nature and extent of her rights and interest in said property; denied that she did not fully understand that her said deed was void as to her, and that she had the
635 right to recover the fee-simple therein; denied that no right, title or interest passed to him, said Laidley, by her said deed; he denied that C. P. Huntington acquired an estate in fee, or any other than the life estate of John M. Pennybacker by the deed of S. H. G. Pennybacker and John M. Pennybacker, dated February 25th, 1870; denied that C. P. Huntington by his deed dated October 16, 1871, conveyed to the Central Land Company any other than the life estate of John M. Pennybacker; denied that S. H. G. Pennybacker sold her estate to C. P. Huntington or joined in the execution of the deed to C. P. Huntington executed by Jno. M. Pennybacker and signed by her bearing date the 25th day of February, 1870; and he, said Laidley, prayed in his answer that said Central Land Company's bill be dismissed.

The defendants say that afterwards, to wit: on the 21st day of March, 1888, said Central Land Company of West Virginia filed in the clerk's office of the circuit court of Summers county, State of West Virginia, to which court said cause had been removed, by leave of said court, its amended and supplemental bill in said suit in chancery, and defendants say that said amended and supplemental bill is identical in parties and in substance with the said original bill except that it contains the allegation that since the filing of the original bill the supreme court of appeals of the State of West Virginia had decided that the deed to C. P. Huntington, signed by John M. Pennybacker and S. H. G. Pennybacker, dated Feb-
636 ruary 25th, 1870, was void as far as it affected S. H. G. Pennybacker's interest in the land in controversy.

And defendants say that afterwards, on the 9th day of May, 1888, said John B. Laidley filed his separate answer in said circuit court of Summers county to said amended and supplemental bill. And that said answer is in substance the same as his said answer to said original bill.

And the defendants say that afterwards, to wit: on the 14th day of May, 1888, the said suit in chancery was submitted to the said circuit court of Summers county, State of West Virginia, and was heard by said court upon said original bill and exhibits and the separate demurrers of John B. Laidley and Sarah H. G. Pennybacker and the answer of John B. Laidley to said bill and upon the aforesaid amended and supplemental bill and exhibits of said Central Land Company of West Virginia and the separate demurrers thereto of John B. Laidley and Sarah H. G. Pennybacker and upon the separate answer of John B. Laidley to said amended and sup-

plemental bill and general replication to said answer and upon the depositions filed in said cause and the former orders and decrees made therein, and said court overruled the demurrers of said J. B. Laidley and it was after full argument considered by the court that the Central Land Company of West Virginia was not entitled to the relief prayed for, and it was adjudged, ordered and de-
637 creed by said court that said company's original and supplemental bills be and they were dismissed at the costs of the said company.

The defendants say that said decree remains in full force and effect not reversed or set aside and said decree and judgment are conclusive between these defendants and the Central Land Company of West Virginia and C. P. Huntington, special receiver for said company, upon the title and right of possession to the land in controversy.

The defendants say that the matters and things alleged in the plaintiff's amended bill, so far as they affect the title of John B. Laidley and the claim of title of the Central Land Company of West Virginia to the land in controversy were in issue and fully adjudicated against the Central Land Company by the judgment in ejectment and decree in chancery aforesaid, except certain allegations charging that John B. Laidley by construction was the confidential agent of C. P. Huntington at the time of his purchase of the land in controversy, all of which are fully denied by the answer of John B. Laidley and others accompanying this plea.

The defendants say the prayer of the plaintiff's amended bill is identical in legal effect with the prayer of the original and the amended and supplemental bill of the Central Land Company, so far as it relates to the title to the land in controversy.

And the defendants say that the Central Land Company of West Virginia and the plaintiff C. P. Huntington, special receiver for said company, are estopped by the judgment in ejectment and the decree in chancery hereinbefore set out to allege against the defendant John B. Laidley and the other defendants to this plea, who are in privity with him, as the plaintiff hath alleged in his amended bill that the Central Land Company of West Virginia at the time of his, the plaintiff's, appointment as its special receiver, had right of possession and title legal and equitable to the 240 acres of land in controversy or any part thereof, and are estopped to deny that John B. Laidley and the defendants to this plea, who claim in
638 privity with him, part of said land, had right of possession and title legal and equitable thereto, and they plead said estoppel in bar of said allegations of said amended bill to which they have pleaded in the foregoing bill, being all of the allegations thereof except those allegations of said amended bill which they have denied in their answer accompanying this plea setting up a confidential relation between the plaintiff and J. B. Laidley, and they pray the judgment of this honorable court whether they ought to

make any other or farther answer to said allegations of said amended bill.

JOHN B. LAIDLEY,
W. S. LAIDLEY, *Trustee*,
By COUNSEL.

CAMPBELL & HOLT,
THOMPSON & VINSON,
BROWN & JACKSON,
A. F. MATHEWS,
W. E. CHILTON, &
J. B. LAIDLEY,
Att'ys for Defendants.

UNITED STATES OF AMERICA, *District of West Virginia*, } *To wit:*

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do certify that John B. Laidley, whose name is signed to the foregoing plea and who is named as a defendant therein, this day personally appeared before me and, being duly sworn, said that he is acquainted with the contents and allegations of said plea, and that the same are true in point of fact, and that said plea is not interposed for delay.

Taken, sworn to, and subscribed before me this 13th day of July, 1897.

L. B. DELLICKER, *Clerk.*

I, Alex'r F. Mathews, an attorney-at-law, practicing in the circuit court of the United States for the district of West Virginia, and of counsel for defendants, do certify that in my opinion the fore-
639 going plea is well founded in point of law.

ALEX'R F. MATHEWS.

The defendant not waiving his plea to the plaintiff's amended bill, but still insisting and relying upon the same, for answer to so much of said amended bill as he is advised it is material for him to answer, say-:

It is not true as the plaintiff hath alleged that defendant, John B. Laidley and divers other persons combined, conspired and confederated together to wrong, cheat and defraud C. P. Huntington and the Central Land Company of West Virginia, and divers other persons to whom said land company had sold and conveyed lots and parcels of the said 240-acre tract of land in controversy, or either or any of them.

It is not true that said John B. Laidley purchased and bought said land from Sarah H. G. Pennybacker for the purpose of cheating and defrauding the Central Land Company and its grantees and those holding under them, or either or any of them, out of the property aforesaid.

The defendant says that there never existed at any time any state of circumstances out of which could arise an implied duty, obliga-

tion or trust, whereby said John B. Laidley was bound either in the courts of law or in the courts of conscience to inform C. P. Huntington or the Central Land Company of West Virginia of the defect in the acknowledgment of the deed of John M. Pennybacker and S. H. G. Pennybacker to C. P. Huntington, bearing date the
640 25th day of February, 1870, exhibited with plaintiff's amended bill as "Exhibit (B)," and which forbids him, said John B. Laidley, by way of equitable estoppel or otherwise to buy the lands therein described from S. H. G. Pennybacker and bring suit to recover the same.

The facts and circumstances of his purchase of said land and his right and title thereto under his purchase are fully set out in the record of the judgement in ejectment of John B. Laidley against The Central Land Company of West Virginia, referred to in the defendant's plea, and a copy of which record is here filed as a part of this answer in aid of said plea, marked "Exhibit (A)," and in the record of the decree in chancery in the suit also referred to in said plea, wherein The Central Land Company of West Virginia was plaintiff and John B. Laidley, C. P. Huntington, S. H. G. Pennybacker and others were defendants, a copy of which record is herewith filed as a part of this answer in aid of said plea, marked "Exhibit (B)."

Defendant says that John B. Laidley never acquired in a confidential way, or any other way, knowledge or information from his father, Albert Laidley, or from his father's papers of whatever description, that the certificate of acknowledgement and the execution of the deed aforesaid of S. H. G. Pennybacker to C. P. Huntington was defective and that it might be claimed that the said deed was void.

641 It is true that John B. Laidley in the year 1870 was a member of his father's family and resided with him in the little village of Barboursville, in the county of Cabell, State of West Virginia, and at the date of C. P. Huntington's alleged purchase had not arrived at his majority nor was he at home or in the State. On the contrary he was in attendance at the University of Virginia as a student, in the county of Albemarle, State of Virginia, whither he had been sent by his father in the month of April in the year 1869, and where he remained until July in the year 1873 as a student at said college and the last year he studied law and graduated under Dr John B. Minor, except the summer vacation of 1871 or 1872, and he knew nothing about Sarah H. G. Pennybacker or her land or Huntington's purchase thereof until after the death of his father in December, 1876.

Defendant says it is not true that John B. Laidley obtained his knowledge as to the execution and acknowledgement of deed from conversations with his father, Albert Laidley, who had never practiced law after the war between the States, being proscribed by the test oath, until after the Huntington purchase aforesaid, and he had no law office whatever after said war.

Defendant says that John B. Laidley never was a student of law under his father, never was a clerk or scrivener in his father's office,

law or any other sort, never was occupant of the same room
642 or rooms with his father, never was associated with him as partner or jointly in the transaction of law or any other business, nor in the examination of land titles or execution of deeds or other legal documents. There never was any sort of a business or other relationship between said John B. Laidley and his father Albert Laidley by, through or from which the said J. B. Laidley gained any knowledge, by conversation or otherwise, of the purchase by C. P. Huntington of S. H. G. Pennybacker of said land, or of her deed to him therefor. Said J. B. Laidley knew nothing about the same until after the death of his father.

Said John B. Laidley never, by virtue of any relationship with his father, had access to his father's papers, nor to his deeds or abstracts relating to the titles to land purchased by said Albert Laidley for C. P. Huntington, never had access to his papers, deeds, abstracts or acknowledgments relating to the Pennybacker land aforesaid, never saw any of such papers until after the death of his father in 1876, when said J. B. Laidley qualified as his administrator, and then only a memorandum or contract in a pocket memorandum book, signed by John M. Pennybacker, for the sale to Albert Laidley of said Pennybacker tract of 240 acres of land.

And for his further answer to said amended bill, the said John B. Laidley says that on the 10th day of September, 1890, he recovered seventeen separate judgements in separate actions in eject-
643 ment in the circuit court of Cabell county, State of West Virginia, as follows:

1. John B. Laidley against Wm. Duster.
2. Same against R. T. Harvey.
3. Same against Jackson Jasper and James Jasper.
4. Same against A. L. Williams.
5. Same against S. R. Hall.
6. Same against C. F. Remley and S. A. Remley.
7. Same against S. J. Love and Isadore Myers.
8. Same against Michael O'Brien.
9. Same against Albert Napier.
10. Same against S. F. Jobe's Heirs.
11. Same against Clay Greenwell.
12. Same against Catharine Kneff.
13. Same against Margaret Sands.
14. Same against Charles Rose.
15. Same against J. M. Nobles.
16. Same against E. T. Mitchell's Heirs.
17. Same against J. L. M. Curry.

and that in each said judgement he released to the respective defendants his title and interest in their respective lots, upon the condition of their paying the amount of the original purchase-money of said lots to said Laidley, for which orders of sale were entered in each case.

Duly certified copies of the said several judgements and orders of

sale are herewith filed as part of this answer, marked Exhibits Numbers 1 to 17, respectively.

The defendant says that the claimant- of said seventeen lots are respectively liable to said Laidley for the amount of the said judgements respectively, and that the Central Land Company is liable to said respective owners for precisely the same amounts.

The defendant therefore prays that he be dismissed as to all matters alleged in said amended bill, except as to an account of said purchase-money judgements, and as to *him* he prays that a commissioner may ascertain the amount of said claims, and to whom payable, and an account of the rents and profits, and will ever pray, etc.

644 JOHN B. LAIDLEY,
By COUNSEL.

VINSON & THOMPSON,
CAMPBELL & HOLT,
BROWN & JACKSON,
W. E. CHILTON,
A. F. MATHEWS, AND
J. B. LAIDLEY,
Attorneys for Defendants.

UNITED STATES OF AMERICA, }
District of West Virginia, } *To wit:* --

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do certify that John B. Laidley, whose name is signed to the foregoing answer and who is named as a defendant therein, this day personally appeared before me and, being duly sworn, said that he is acquainted with the contents and allegations of said answer, and that the same are true in point of fact.

Taken, sworn to, and subscribed before me this 13th day of July, 1897.

L. B. DELLICKER, *Clerk.*

And at the same day, to wit, on the 13th day of July, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Receiver, &c., of the Central Land Co.,
vs.
JNO. B. LAIDLEY & ALS. } In Equity.

This day the defendants, W. S. Laidley, trustee; Thos. J. Bryan, James F. Brown, Wm. E. Chilton, Mary E. Chilton, C. W.
645 Campbell, F. L. Doolittle, E. S. Doolittle, R. A. Goodwin, George F. Donella, James Prichard, C. E. Gwinn, O. E. Gwinn, W. W. Gwinn, Rufus Switzer, Garland Buffington, Lillie Handley, W. R. Gunn, W. H. H. Holswade, L. D. Isbell, Oscar Jones, Miriam Laidley, Lizzie Montgomery, James K. Oney, Gordon O'Bierne, J. D.

Terrell, John T. Wilson, Thos. H Harvey, R. T. Harvey, J. E. Erwin, N. Smith, and Vesta Laidley, moved the court to dissolve the injunction heretofore awarded the plaintiff in this cause, and filed and read in support of the motion the record of the action of ejectments of Jno. B. Laidley against the Central Land Company, lately pending in the circuit courts of Cabell county, of Summers county, West Virginia; in the supreme court of appeals of West Virginia, and in the Supreme Court of the United States, and the mandate from the Supreme Court of the United States to the supreme court of appeals of West Virginia, and also the record of the chancery cause of The Central Land Company against John B. Laidley, lately pending in the circuit courts of Cabell county and Summers county, West Virginia, and in the supreme court of appeals of West Virginia, and, the said motion having been argued by counsel and considered by the court, it is adjudged, ordered, and decreed that the said motion be, and it is hereby, overruled and said injunction continued in force.

And at the same day, to wit, on the 13th day of July, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON & ALS.
vs.
THE CENTRAL LAND CO. & ALS.
C. P. HUNTINGTON, Receiver, &c.,
vs.
JNO. B. LAIDLEY & ALS.
} In Equity.

646 These two causes came on this the 13th day of July, 1897, to be heard together, and it appearing to the court that the land in controversy in the second of said causes, between said receiver, Huntington, and the defendants, Jno. B. Laidley & *als.*, and which is known as the 240 acres, or the Pennybacker land, is assessed upon the land books of Cabell county and charged against both the Central Land Company and against Jno. B. Laidley and his alienees, upon motion of the defendants in the second of said causes, it is ordered that C. P. Huntington, receiver, have the said lands entered and assessed upon said land books in his name as such receiver, and that he take the proper steps before the county court of Cabell county to have said lands dropped from said land books in the names of the Central Land Company and of the said John B. Laidley and his alienees; and it is further ordered that in case the said Huntington, receiver, shall succeed in having said land entered and assessed upon said land books in his name and dropped from said land books in the name of the Central Land Company and of the said John B. Laidley, that then the said Huntington, as receiver, out of the rents and profits of said land shall pay the taxes thereon for the current year 1897 and all such taxes as shall hereafter accrue thereon pending this litigation.

And at the same day, to wit, on the 13th day of July, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Sp'l Receiver, &c.,
vs.
JOHN B. LAIDLEY ET AL. } In Chancery.

This day the death of R. T. Harvey having been suggested, on motion, it appearing that the said R. T. Harvey had no actual interest in said property in controversy, the suit is abated as to him.

647 *Execution for Costs.*

(Filed July 13, 1897.)

The State of West Virginia to the sheriff of Cabell county, Greeting:

We command you that of the goods and chattels of the Central Land Company of West Virginia, late in your bailiwick, you cause to be made the sum of $535.40, which John B. Laidley lately in our circuit court for said county of Cabell recovered against it fo- his costs in a certain action lately pending in said court, in which the said John B. Laidley was plaintiff and the said Central Land Company of West Virginia was defendant, whereof the said defendant is convicted, as appears to us of record, and that you have the same before the judge of our said court, at rules to be held in the clerk's office of said court, on the first Monday in July next, to render to the said John B. Laidley of the cost aforesaid; and have then there this writ.

Witness R. W. McWilliams, clerk of our said court, at the courthouse aforesaid, on the 5th day of April, 1897, and in the 34 year of the State.

R. W. McWILLIAMS,
Clerk C. C. C. C.

A copy.
Attest: R. W. McWILLIAMS, *Clerk*,
O. J. WILKINSON, *Deputy*.

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA, a Corporation, } In Ejectment.

and

SAME
vs.
SAME.

Taxation of Costs.

Clerk's costs (M. S. T.), April, 1882, rules, filing two notices and two declarations	.60
Rules, $1; marking att'y and dock't, 60 (1st suit)	1.60

648	Sheriff's return (twice)	1.00
	Rules, $1; marking att'y, 60 (2nd suit)	1.60
	Entering fourteen law orders	7.00
	Five witnesses' attendance	1.50
	Swearing witnesses and jury	.75
	Five spa. and receipts and one original	1.25
	Filing surveyor report, .15, and filing dep., .60	.75

(Clerk Peyton), Dec. 23, 1887, rules:

Recording mandate	1.00
Entering twelve law orders	6.00
Two spa., ten copies, and two rec-ipts	2.50
Ten witnesses' attendance	3.00
Filing spec. plea, sur. rep't, claim for imp., etc	.60
Swearing two juries and witnesses	1.50
Copy of orders certified and sent to Summers Co	5.30
(Clerk cir. ct., Summers Co., B. L. Hoge)	5.30
(Clerk Diehl, Cabell Co.:) Taxing cost, 85; execution, 75.	1.60
Order	1.00

(F. F. McCullough, count- cl'k, Cabell county:)

Copy of exhibits	16.20
Costs in supreme court, Nov. 26, 1887, Clerk O. S. L	30.35
Printing record	95.50
Clerk circuit court (copy record)	47.50
Sheriff McKendree (notice)	.75
Attorney	30.00
Two copies of mandate (O. S. L.)	2.00
Copy of marriage record (Maryland)	4.50
Costs of depositions	19.00

(Sheriff Jo Stewart), March, 18–2:

	Serving six notices and dec	4.50
	Sept., 1882, serving one dec. and notice (Kyle)	.75
	Dec., 1884, serving five subpœnas (Kyle)	1.25
	May, 1890, serving three subpœnas (Kyle)	.75
649	August, 1890, serving seven subpœnas (Kyle)	1.75
	Dec., 1884, attendance of five witnesses (pl'ff)	8.35
	May, 1890, " " three " "	6.10
	August, 1890, " " seven " "	11.30
	August, 1883, Surveyor Thornburg (first report)	6.00
	November, 1883, " (second report)	73.50
	April, 1890, " (third report)	90.00
	Chairmen and rodmen	30.00
	Statute fee	10.00
	Clerk McWilliams, April 5, 1897, execution and copy	1.50
		$535.40

I certify that the foregoing is a true statement of the taxation of the costs from the records in my office in the above-entitled action.
April 5th, 1897.

R. W. McWILLIAMS,
Clerk of Cir. Court of Cabell Co., State of W. Va.

And at another day, to wit, on the 4th day of September, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Special Receiver of the Central Land Company,
vs.
JOHN B. LAIDLEY ET AL. } In Chancery.

On motion of the defendants, the purchasers, claiming under John B. Laidley, and by consent of the plaintiffs, the time in which the defendants, other than John B. Laidley, have leave to file their plea or answer to the plaintiff's amended bill is extended to September rules, 1897, and, by like consent of parties, the time in which the plaintiff may take such action as he may see fit upon any pleadings that the defendants, other than Laidley, may file is extended until October rules, 1897.

WILSON & THOMPSON.
W. E. CHILTON,
By V.

650 And at the same day, to wit, on the 4th day of September, 1897, the following order was made and entered of record, to wit:

COLLIS P. HUNTINGTON, Receiver of the Central Land Company of West Virginia, Complainant,
against
JOHN B. LAIDLEY & Others, Defendants.

Upon the amended bill of complaint in the above cause, as amended by the order entered herein on the 21st day of December, 1896, and upon the so-called plea and answer filed herein by the defendant John B. Laidley on the 13th day of July, 1897, and upon all the pleadings and proceedings in said cause, the defendant John B. Laidley or his solicitors are hereby ordered to show cause, at the next term of this court, to be held at Parkersburg, West Virginia, on the 10th day of January, 1898, at eleven o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, why the so-called plea and answer filed herein by the defendant John B. Laidley on the 13th day of July, 1897, should not be stricken from the files as irregular and ineffective and as not being in conformity with the rules and practice of this court, for the reason that, among others, the answer which accompanies said plea and is alleged in said answer to be in aid thereof does not deny the fraud and combination charged in that portion of the amended bill which is

covered by said plea, as is required by the 32nd rule of the rules and practice in equity, and for the reason that said answer, being alleged to be in aid of said plea, denies the fraud and combination charged in that part of the amended bill which is not covered by said plea, and why the complainant should not have such other or further order or relief in the cause as may be equitable and proper.

And it is further ordered that the time of the complainant to take issue upon said plea, or to set the same down for argument, or to file a replication to said answer, or take such other proceedings in respect thereto as he may be advised be, and the same is hereby, extended until twenty days after the hearing and determination of the motion to be made under this order.

651 And it is further ordered that a service of a copy of this order to show cause on the defendant John B. Laidley or his solicitors on or before the 4th day of October, 1897, be sufficient.

United States Circuit Court, District of West Virginia.

COLLIS P. HUNTINGTON, Receiver of the Central Land Company of West Virginia, Complainant,
against
JOHN B. LAIDLEY and Others, Defendants.

STATE OF NEW YORK, *City and County of New York*, } ss:

Maxwell Evarts, being duly sworn, deposes and says: I am one of the counsel for the complainant in the above-entitled suit. I have examined the so-called plea and answer filed herein by the defendant John B. Laidley on the 13th day of July, 1897, and I have advised the complainant and verily believe that the so-called plea and answer does not conform to the rules and practice of this court for the reason, among others, that the answer which accompanies said plea and is alleged in said answer to be in aid thereof does not defraud and combination charged in that portion of the amended bill which is covered by said plea, as is required by the 32nd rule of the rules of practice in equity, and for the reason that said answer, although in aid of said plea, as is alleged therein, denies the fraud and combination charged in that part of the amended bill which is not covered by said plea, and that such so-called plea and answer are wholly irregular and ineffective and should be stricken from the files of the court, and the complainant desires to move that such so-called plea and answer should be stricken from the files.

MAXWELL EVARTS.

Subscribed and sworn to before me this 11th day of August, 1897.

[NOTARIAL SEAL.]

WILLIAM SHILLABER,
Notary Public, New York County.

652 *Answer of Defendants.*

(Filed Sept. 4, 1897.)

Circuit Court of United States, District of West Virginia.

Collis P. Huntington, Special Receiver of the Central Land Company of West Virginia, Plaintiff, *vs.* Thos. J. Bryan, James F. Brown, Wm. E. Chilton, Mary E. Chilton, C. W. Campbell, F. L. Doolittle, E. S. Doolittle, R. A. Goodwin, George F. Donnella, James Pritchard, C. E. Gwinn, O. E. Gwinn, W. W. Gwinn, Rufus Switzer, Garland Buffington, Lillie Handley, W. R. Gunn, W. H. H. Holswade, L. D. Isabel, Oscar Jones, Lizzie Montgomery, Jas. K. Oney, Gordon O'Berne, J. D. Terrell, John T. Wilson, Thos. H. Harvey, N. Smith, Defendants.	In Equity.

The joint and separate answer of the above-named defendants to the amended bill of complaints of the above-named plaintiff.

In answer to the said bill the above-named defendants, each for himself and all jointly, say as follows:

653 By protestation, not confessing any of the matters and things to be true in matter and form as the plaintiff hath charged in his said amended bill, for answer thereto the defendants say the plaintiff ought not to be heard to allege against them as he hath done in his amended bill: *i. e.*, that the Central Land Company of West Virginia, at the date of his appointment as special receiver for said company, to wit, on the 16th day of Dec., 1890, had right of possession and title to the tract of 240 acres of land mentioned in said amended bill.

Because they say that heretofore, to wit, at April rules, 1882, said John B. Laidley filed his declaration in ejectment, in the clerk's office of the circuit court of Cabell county, State of West Virginia, against the Central Land Company of West Virginia, and thereby instituted his action of ejectment in said court, which was a court of competent jurisdiction both as to said parties and as to the subject-matter of said action, against said company, to recover possession of an estate in fee-simple in said tract of land. Said company afterwards filed its plea of not guilty to said declaration in said court, upon which plea issue was joined and a trial of said action was had in said court in December, 1884, which resulted in a verdict for said company, in pursuance with instructions given to the jury by the court; and judgment was rendered by said court upon said verdict in favor of said company against said Laidley. Before the jury the said company relied in support of its title upon the four deeds exhibited with the plaintiff's said amended bill, marked "Exhibit (A)," "Exhibit (B)," "Exhibit (C)," "Exhibit (D)," respectively; and upon its possession under said deeds. And, in support of his title, said

Laidley relied upon the deed exhibited with said plaintiff's amended bill, marked "Exhibit (F)," and said Laidley moved the court to instruct the jury that the deed above described as marked "Exhibit B" was null and void, so far as it affected the estate and interest of S. H. G. Pennybacker in said land, which motion the court refused.

Upon the petition of the said John B. Laidley, the supreme court of appeals of West Virginia, on the 23d day of Oct., 1886,
654 awarded a writ of error to the judgment aforesaid, and on the 27th day of November, 1887, upon the final hearing on said petition, said supreme court declared said deed, "Exhibit B," being the deed of John M. Pennybacker and S. H. Pennybacker to C. P. Huntington bearing date the 25th day of February, 1870, null and void, so far as it purports to convey the estate of S. H. G. Pennybacker in said land and reversed said judgment, set aside said verdict and awarded a new trial of said action. Said supreme court in its opinion and judgment on said writ of error declared that the legal effect of said deed was to vest a freehold estate in John M. Pennybacker for the joint lives of himself and Sarah H. G. Pennybacker, and a remainder in fee-simple in said S. H. G. Pennybacker, upon the death of her husband, J. M. Pennybacker, and that said deed did not vest a separate estate in the said S. H. G. Pennybacker. Said judgment of the said supreme court remains in full force and effect, unreversed or set aside, and is conclusive upon the matters therein decided between the said John B. Laidley and the said Central Land Company, and their privies and the plaintiff, C. P. Huntington, special receiver.

On the 12th day of September, 1890, upon the new trial of said action in said circuit court of Cabell county, West Va., a verdict was returned by the jury in favor of said John B. Laidley against said Central Land Company for an estate in fee-simple in said land, as described in the surveyor's report, and judgment was rendered by said circuit court of Cabell county according to the verdict of the jury—for an estate in fee-simple in the said land, as described in the said report, which judgment remains in full force and effect, unreversed or set aside; and, that from said judgment of the circuit court of Cabell county, the defendant Central Land Company presented its petition to the supreme court of appeals of the State of West Virginia, praying for a writ of error to said judgment, which petition was refused and the application for said writ was denied by the said supreme court; and thereupon the said defendant Central Land Company sued out of the Supreme Court of the United States a writ of error to the judgment of the supreme court of ap-
655 peals of the State of West Virginia, denying the application for a writ of error to the said judgment of the circuit court of Cabell county.

That the whole record in said cause was before the United States Supreme Court and all the questions arising therein considered by it, and after elaborate argument by counsel, and mature consideration by the court, it affirmed the decision of the supreme court of appeals of West Virginia in denying the application for the said writ of error.

And, that said judgment was rendered by a court of full plenary jurisdiction, both over the parties and the subject-matter, and that the same has become final and still remains unreversed and in full force and effect, all of which will more fully appear by duly certified copies of the record and judgments in said cause, filed herewith as Exhibit "Ejectment," asked to be read as part of this answer.

The respondents further say that by the statutes of the State of West Virginia, said judgment is made conclusive between the parties, their privies and those claiming under them and all parties claiming under and asserting same title and possession involved in said action.

Respondents further say that the title set up by the plaintiff in his bill is the same identical title set up and relied on in said action of ejectment and it is the same identical tract of land, (Pennybacker tract,) which is set out in the plaintiff's bill that was the subject-matter of said action of ejectment, and the parties and those claiming under them are the same identical parties to said action of ejectment; and these respondents here now plead and set up said judgment as a full, final complete bar to all the matters alleged in the plaintiff's bill, and these respondents here now plead *res judicata* and rely upon said judgment as an estoppel and answer to all the matters alleged in the plaintiff's bill.

The defendants aver that before the jury at said trial, the defendant John B. Laidley, and plaintiff in said action, in support of his title, relied upon the deed executed by S. H. G. Pennybacker to him, said J. B. Laidley, bearing date the 26th day of January, 1882, a copy of which is filed with plaintiff's amended bill marked
656 "Exhibit (F)," and the said Central Land Company of West Virginia, defendant in said action, in support of its title, relied upon the three deeds, to wit, a deed purporting to be executed by S. H. G. Pennybacker and John M. Pennybacker to C. P. Huntington, bearing date the 25th day of February, 1870; second, a deed executed by Albert Laidley and Vesta Laidley to C. P. Huntington, bearing date the 13th day of April, 1870; third, a deed executed by C. P. Huntington to said Central Land Company of West Virginia, bearing date the 16th day of October, 1871; copies of which three several deeds are filed with plaintiff's amended bill, marked "Exhibit (B)," "Exhibit (C)," and "Exhibit (D)," respectively. Both parties to said action relied upon the title of S. H. G. Pennybacker, derived by deed from Rebecca J. Everett, bearing date the 18th day of August, 1865. Said deed was in evidence before the jury a copy of which is also exhibited with plaintiff's amended bill, marked "Exhibit (A)." The court, after the evidence was in, instructed the jury that the deed described above as "Exhibit (B)," was null and void as to S. H. G. Pennybacker and did not convey her estate in the lands in controversy to C. P. Huntington, and the jury found a verdict, as aforesaid, in favor of said Laidley.

The defendants say that afterwards and pending said action of ejectment, the said Central Land Company of West Virginia instituted its suit in chancery against said J. B. Laidley, C. P. Huntington and others, in the circuit court of Cabell county, State of West

Virginia, and, to wit: at June rules, held in the clerk's office of said court, on the first Monday in June, in the year 1887, filed its bill of complaint in said suit.

That in said bill of complaint the said company alleged that R. J. Everett being seized in fee of a tract of 240 acres of land, situate in Cabell county, on the 18th day of August, 1865, sold and conveyed the same to S. H. G. Pennybacker. That on the 25th day of February, 1870, S. H. G. Pennybacker sold and conveyed the same to C. P. Huntington for $11,000. That her husband, John M. Pennybacker, joined in said deed. That on the 16th day of October, 1871, C. P. Huntington sold and conveyed the same to said company. That on the 13th day of April, 1870, Albert Laidley, the father, and his wife, the mother of defendant John B. Laidley, conveyed all of Albert Laidley's interest in said land to C. P. Huntington. That C. P. Huntington and his grantee, the land company, held under the said deeds to Huntington open, actual, adverse and exclusive possession of the land. That on the 26th day of January, 1882, after the death of John M Pennybacker, defendant John B. Laidley, with full notice of the land company's equities, procured from S. H. G. Pennybacker a deed of conveyance to him of said tract for $500. That said Laidley, a practicing attorney, *ex suo mero motu*, endeavored to induce said Sarah Pennybacker to commence suit against the then owners, informing her that she had an interest in or claim to the same, for a fee of one-half of the recovery. That she refused the offer and refused to bring suit, saying she and her husband had sold the land to Huntington for $11,000, had received the money and made no claim to the land. That afterwards Laidley informed her that her interest was a dower interest and offered her $500 for it, which she accepted; received $100 cash and discounted Laidley's note of $400 for $225. That in July, 1872, Sarah H. G. Pennybacker filed her bill in chancery against her husband John M. Pennybacker and others, in which she recognized her sale to Huntington of the 240 acres now here in controversy and had the same declared by decree therein, her sole and separate property. That on the 20th day of February, 1874, said S. H. G. Pennybacker conveyed to Warren J. Parsons the one acre reserved in her deed to Huntington, and therein recognized her sale to Huntington. That by virtue of said several deeds and said actual possession, and said decree, and Laidley's notice of all said facts, the company's title was valid in law and equity, and J. B. Laidley took nothing by his deed; that the same is a cloud on the company's title; that at the date of Laidley's deed the land was worth $30,000 by reason of improvements put by the company on the land and adjoining lands; that said deed was procured by Laidley by fraud, imposition, misrepresentation and concealment;
658 that the consideration was inadequate; that she was induced to believe she was conveying her dower interest only; that he concealed from her that she had a fee-simple, if any interest; that Laidley purchased with intent of bringing suit against the true owners and to defraud them; that she and her husband were insolvent and not liable on their warranty; that having used the pur-

chase-money, she was estopped to assert her claims, and Laidley being a purchaser with notice is also estopped; that by reason of the facts alleged, Laidley, if he took the legal title, held it as trustee for the company, that latter having acquired the superior equity; that Laidley has pending in the supreme court of appeals of the State of West Virginia, on writ of error, an action of ejectment against the company, *to* which the validity of the S. H. G. Pennybacker deed to C. P. Huntington is in issue, and if it be held void and Laidley holds the legal title, he holds it as trustee for the company. And, in that event, the prayer of the bill was that said Laidley be compelled to convey the legal title to said company and those holding under it. On the other hand, if said deed be held valid, that Laidley's deed be set aside as a cloud upon the title, and if entitled to neither relief, that the $11,000 purchase-money be charged on the land for the benefit of the company, and that Laidley be enjoined from prosecuting his actions in ejectment against the company and its grantees until the matters above alleged can be determined in equity, and for general relief.

And the defendants say that at the following rule day, to wit, at rules held in said clerk's office on the first Monday in July, in the year 1887, the said John B. Laidley filed his separate answer to said bill of complaint, and in said answer the defendants say that he, the said John B. Laidley, denied the alleged superior equities of said company set up in said bill, denied that he, said Laidley, held said land as trustee for the use and benefit of said company; denied the said company's alleged equity to call on him for a conveyance to it of his legal title: denied that he bought said land with intent to defraud said land company or its grantees out of the same;
659 denied that the said company had any equity to charge the $11,000 purchase-money paid by C. P. Huntington as a lien upon said land; denied that the consideration paid by said Laidley was inadequate; denied that S. H. G. Pennybacker, or that he, said Laidley, as her grantee, was liable, legally, equitably or morally to be charged personally with said $11,000; denied that S. H. G. Pennybacker, or he, said Laidley, her grantee, was estopped by said void deed to C. P. Huntington by any warranty therein, or by any act or word of hers in relation to said land, from asserting title thereto; or that she, or he, said Laidley as her grantee, was estopped by her recognition of her sale to C. P. Huntington in her bill filed in 1882 against her husband, to recover certain property and have it declared her separate estate; denied that her interest in the land in controversy was her sole and separate estate; denied that her title or right of action was barred by adversary possession; denied that Albert Laidley ever had any right, title, or interest, by purchase or otherwise, in the estate of S. H. G. Pennybacker; denied that he, J. B. Laidley, had any actual knowledge of the matters and things alleged in the Central Land Company's said bill, other than what he derived from the records in the county clerk's office; denied that at the time of said purchase he made any false or fraudulent representation to Mrs. Pennybacker about her title, estate or interest in said land; denied that he concealed from her the nature and extent of

her rights and interests in said property; denied that she did not fully understand that her said deed was void, as to her, and that she had the right to recover the fee-simple therein; denied that no right, title or interest passed to him, said Laidley, by her said deed; he denied that C. P. Huntington acquired an estate in fee, or any other than the life estate of John M. Pennybacker by the deed of S. H. G. Pennybacker and John M. Pennybacker, dated February 25th, 1870; denied that C. P. Huntington by his deed, dated October 16th, 1871, conveyed to the Central Land Company any other than the life estate of John M. Pennybacker; denied that S. H. G. Pennybacker sold her estate to C. P. Huntington, or joined in the execution of the deed to C. P. Huntington executed by John
660 M. Pennybacker and signed by her, bearing date the 25th day of February, 1870; and he, said Laidley, prayed in his answer that said Central Land Company's bill be dismissed.

The defendants say that afterward, to wit: on the 21st day of March, 1888, said Central Land Company of West Virginia, filed in the clerk's office of the circuit court of Summers county, State of West Virginia, to which court said cause had been removed, by leave of said court, its amended and supplemental bill in said suit in chancery, and defendants say that said amended and supplemental bill is identical in parties and in substance with the said original bill, except that it contains the allegation that since the filing of the original bill, the supreme court of appeals of the State of West Virginia had decided that the deed to C. P. Huntington, signed by John M. Pennybacker and S. H. G. Pennybacker, dated February 25th, 1870, was void so far as it affected S. H. G. Pennybacker's interest in the land in controversy.

And defendants say that afterwards on the 9th day of May, 1888, said John B. Laidley filed his separate answer in said circuit court of Summers county to said amended and supplemental bill. And, that said answer is in substance, the same as his said answer to said original bill.

And the defendants say that afterwards, to wit: on the 14th day of May, 1888, the said suit in chancery was submitted to the said circuit court of Summers county, State of West Virginia, and was heard by said court upon said original bill, and exhibits and the separate demurrers of John B. Laidley and Sarah H. G. Pennybacker, and the answer of John B. Laidley to said bill, and upon the aforesaid amended and supplemental bill and exhibits of said Central Land Company of West Virginia and the separate demurrers thereto, of John B. Laidley and Sarah H. G. Pennybacker and upon the separate answer of John B. Laidley to said amended and supplemental bill and general replications to said answers, and upon the depositions filed in said cause and the former orders and decrees made therein, and said court overruled the demurrers of said John B. Laidley and it was after full argument considered by the
661 court that the Central Land Company of West Virginia was not entitled to the relief prayed for, and it was adjudged, ordered and decreed by said court that said company's original and supplemental bills be and they were dismissed at the costs of the

said company. And said land company took said cause upon appeal from the decree dismissing the bill to the supreme court of appeals of West Virginia, where the whole matter was elaborately argued by counsel for both plaintiff and defendant, and upon mature consideration by the court, the decree dismissing the bill was affirmed.

The defendants say that said decree remains in full force and effect, not reversed or set aside, and said decree and judgment are conclusive between these defendants and the Central Land Company of West Virginia, and C. P. Huntington, special receiver for said company, upon the title and right of possession to the land in controversy.

The defendants say that the matters and things alleged in the plaintiff's amended bill, so far as they affect the title of John B. Laidley and the claim of title of the Central Land Company of West Virginia to the land in controversy were in issue and fully adjudicated against the Central Land Company by the judgment in ejectment and decree in chancery aforesaid, except certain allegations charging that John B. Laidley by construction was the confidential agent of C. P. Huntington at the time of his purchase of the land in controversy, all of which are fully denied by the answer of John B. Laidley, and are here denied by these respondents; and as to said allegations, the defendants say they are cumulative in support of the charges and prayer of the original and amended and supplemental bill of the Central Land Company hereinbefore set out and are equally concluded by the judgment and decree aforesaid and denied by the answer.

The defendants say the prayer of the plaintiff's amended bill is identical in legal effect with the prayer of the original and amended and supplemental bill of the Central Land Company, so far as it relates to the title to the land in controversy.

And the defendants say the Central Land Company of
662 West Virginia, and the plaintiff, C. P. Huntington, special receiver for said company, are estopped by the judgment in ejectment and the decree in chancery hereinbefore set out to allege against the defendant John B. Laidley and these defendants who are in privity with him, as the plaintiff hath alleged in his amended bill that the Central Land Company of West Virginia at the time of his, the plaintiff's, appointment as its special receiver, had right of possession and title legal and equitable to the 240 acres of land in controversy, or any part thereof, and are estopped to deny that John B. Laidley and these defendants, who claim, in privity with him, part of said land, had right of possession and title legal and equitable by virtue of the judgment and decree aforesaid, and they plead said estoppel in bar of all the allegations of said amended bill which in any way affect the defendants' right of possession and title of said land or any part thereof.

These respondents further say that this honorable court has no jurisdiction of this case and ought not to have and take cognizance thereof that every matter and allegation contained in the plaintiff's bill that would give a court of equity original jurisdiction therein

has been adjudicated in the chancery cause of Land Company against Laidley, except the allegation of after-discovered evidence upon the part of the plaintiff that John B. Laidley was a clerk and partner in his father's office, who passed upon Huntington's title and occupied such a confidential relationship to the plaintiff by reason thereof, that the plaintiff has in equity the right to compel Laidley to reconvey the Pennybacker tract of land to him, and that the knowledge of said trust relationship came to him after the termination of the said chancery cause of Land Company against Laidley. Respondents say that this alleged fact and allegation does not give a court of equity jurisdiction to entertain an original bill for after-discovered evidence, that if such allegations be true, which these respondents expressly deny, then the remedy, if any, should be by bill of review filed in said chancery cause of Land Company against Laidley.

Respondents further say that the allegations in the plain-
663 tiff's bill, that John B. Laidley occupied a confidential relationship with the plaintiff by reason of being the son of Albert Laidley, who was the attorney representing Huntington in the purchase of said land, is untrue and these respondents expressly deny that said John B. Laidley was ever the law clerk or law or other partner of his father, and they expressly deny that he derived any information whatever concerning the Pennybacker title through his father or by his being in any way connected with him.

Respondents further say that they are informed, believe, and therefore state as true, that the said John B. Laidley was never at any time the attorney or representative of the plaintiff, nor was he ever at any time connected with Albert Laidley as a lawyer or in any other way, except being the son of Albert Laidley, nor with any person who represented the said C. P. Huntington in examining titles and making purchases of said tract of land, and they deny that the said John B. Laidley ever, at any time, sustained any trust relationship whatever to the said C. P. Huntington.

These respondents further say, that if any trust relationship ever existed between the said Huntington and John B. Laidley they knew nothing of it whatever when they purchased parts of said land from John B. Laidley, nor did they ever have any knowledge thereof, or know of anything that would lead them to such a conclusion, and that the first intimation they ever had of any such charge ever having been made was when the plaintiff filed his amended bill; and that if any such trust relationship did exist between the said John B. Laidley and the plaintiff, that a court of equity would take cognizance of and require the said Laidley to reconvey the land to Huntington, they knew nothing of it, and are in no way bound by it, and that no secret trust that existed, or might have existed, between the said Laidley and the said Huntington, which was unknown to these respondents, could operate to divest them of the lands which they have purchased from said Laidley for full value and without any notice of such alleged facts. That it is true
as alleged in the plaintiff's bill that these respondents have
664 become purchasers and owners of portions of said tract of land, and that they purchased the same from said Laidley,

took deeds of conveyances therefor, and they paid a valuable consideration for said purchases, and each and all of said purchases so based upon a valuable consideration were made without any knowledge whatever of any secret trust existing between the said Laidley and the said Huntington; and without knowledge of any fraud upon Laidley's part in procuring his title, and these respondents are purchasers of the property conveyed to them for value and without knowledge or notice of any equity whatever existing between the said Laidley and the said Huntington. They file with this answer abstract of their titles to the lands so purchased by them.

Respondents further say that they are innocent purchasers of said property for value and without notice of any defect in Laidley's title or the existence of any hidden or secret trust existing between himself and the said Huntington, and that they are protected in their titles to such property by the laws of the State of West Virginia.

It is not true as the plaintiff hath alleged that defendant, John B. Laidley and divers other persons combined, conspired and confederated together to wrong, cheat and defraud C. P. Huntington and the Central Land Company of West Virginia, and divers other persons to whom said land company had sold and conveyed lots and parcels of the said 240-acre tract of land in controversy, or either or any of them.

It is not true that said John B. Laidley purchased and bought said land from Sarah H. G. Pennybacker for the purpose of cheating and defrauding the Central Land Company and its grantees and those holding under them, or either or any of them, out of the property aforesaid.

The defendants say that there never existed at any time any state of circumstances out of which could arise an implied duty, obligation or trust, whereby said John B. Laidley was bound either in the courts of law or in the courts of conscience to inform C. P. Huntington or the Central Land Company of West Virginia, of the defect in the acknowledgment of the deed of John M. Pennybacker
665 and S. H. G. Pennybacker to C. P. Huntington, bearing date the 25th day of February, 1870, exhibited with plaintiff's amended bill as "Exhibit (B)," and which forbade him, said John B. Laidley, by way of equitable estoppel or otherwise to buy the lands therein described from S. H. G. Pennybacker and bring suit to recover the same.

The facts and circumstances of his purchase of the said land, and his right and title thereto under his purchase, are fully set out in the record of the judgment in ejectment of John B. Laidley against the Central Land Company of West Virginia, referred to in this answer, and a copy of which record is here filed as part hereof, and in the record of the decree in chancery in the suit, also referred to herein, wherein The Central Land Company of West Virginia was plaintiff, and John B. Laidley, C. P. Huntington, S. H. G. Pennybacker and others were defendants, a copy of which record is herewith filed as part of this answer marked "Exhibit (B)."

Defendants say that John B. Laidley never acquired in a confi-

dential way, or any other way, knowledge or information from his father, Albert Laidley, or from his father's papers of whatever description, that the certificate of acknowledgment and the execution of the deed aforesaid of S. H. G. Pennybacker to C. P. Huntington was defective and that it might be claimed that the said deed was void.

It is true that John B. Laidley, in the year 1870, was a member of his father's family and resided with him in the little village of Barboursville, in the county of Cabell, State of West Virginia, and at the date of C. P. Huntington's alleged purchase had not arrived at his majority nor was he at home or in the State. On the contrary he was in attendance at the University of Virginia as a student, in the county of Albemarle, State of Virginia, whither he had been sent by his father in the month of April in the year 1869, and where he remained until July in the year 1873 as a student at said college, and the last year he studied law and graduated under Dr. John B. Minor, except the summer vacation of 1871 or 1872, and he
666 knew nothing about Sarah H. G. Pennybacker or her land, or Huntington's purchase thereof until after the death of his father in December, 1876.

Defendants say that it is not true that John B. Laidley obtained his knowledge as to the execution and acknowledgment of deed from conversations with his father Albert Laidley, who had never practiced law after the war between the States, being proscribed by the test oath, until after the Huntington purchase aforesaid, and he had no law office whatever after said war.

Defendants say that John B. Laidley never was a student of law under his father, never was a clerk or scrivener in his father's office, law or any other sort, never was an occupant of the same room or rooms with his father, never was associated with him as partner or jointly in the transaction of law or any other business, nor in the examination of land titles, or execution of deeds or other legal documents. There never was any sort of a business relationship between said John B. Laidley and his father, Albert Laidley, by, through or from which the said J. B. Laidley gained any knowledge by conversation or otherwise, of the purchase by C. P. Huntington of S. H. G. Pennybacker of said land, or of her deed to him therefor. Said J. B. Laidley knew nothing about the same until after the death of his father.

Said John B. Laidley never, by virtue of any relationship with his father, had access to his father's papers, nor to his deeds or abstracts relating to the titles to land purchased by said Albert Laidley for C. P. Huntington, never had access to his papers, deeds, abstracts or acknowledgments relating to the Pennybacker land aforesaid, never saw any of such papers until after the death of his father in 1876, when said J. B. Laidley qualified as his administrator, and then, only a memorandum or contract in a pocket memorandum book, signed by John M. Pennybacker for the sale to Albert Laidley of said Pennybacker tract of 240 acres of land.

These respondents deny that the said Laidley procured the deed from said S. H. G. Pennybacker by fraud or any fraudulent mis-

representations whatever, but say that his purchase from said
667 Pennybacker was a *bona fide* transaction from beginning to end, as appears from the record of the chancery cause of Sarah H. G. Pennybacker *vs.* John B. Laidley *et al.*, filed with this answer as "Exhibit X" as part hereof; in which cause the supreme court of appeals of West Va. decided said transaction to be free from fraud—which cause is reported in 33 W. Va. Reports, page 624.

And for further answer to said amended bill, these respondents say that on the 10th day of September, 1890, said Laidley recovered seventeen separate judgments in separate actions in ejectment in the circuit court of Cabell county, State of West Virginia, as follows:

1. John B. Laidley against Wm. Duster.
2. Same against R. T. Harvey.
3. Same against Jackson Jasper and James Jasper.
4. Same against A. L. Williams.
5. Same against S. R. Hall.
6. Same against C. F. Remley and S. A. Remley.
7. Same against S. J. Love and Isadore Myers.
8. Same against Michael O'Brien.
9. Same against Albert Napier.
10. Same against S. F. Jobe's Heirs.
11. Same against Clay Greenwell.
12. Same against Catharine Kneff.
13. Same against Margaret Sands.
14. Same against Charles Rose.
15. Same against J. M. Nobles.
16. Same against E. T. Mitchell's Heirs.
17. Same against J. L. M. Curry.

And that in each said judgment, he released to the respective defendants his title and interest in their respective lots, upon the condition of their paying the amount of the original purchase-money of said lots to said Laidley, for which orders of sale were entered in each case.

Duly certified copies of the said several judgments and orders of sale are herewith filed as part of this answer, marked Exhibits Numbers 1 to 17 respectively.

The defendants say that the claimants of said seventeen lots are respectively liable to said Laidley for the amount of the said
668 judgments respectively, and that the Central Land Company is liable to said respective owners for precisely the same amounts.

The respondents further say that they have a right by authority of said judgments and decrees as aforesaid to be put in possession of the property purchased by them and for which they have paid as aforesaid, and that the injunction rendered against them by this honorable court, restraining them from proceeding to take possession of their property and proceeding to cause to be executed the writ of ejectment awarded by the State court upon said judgment, and they pray that said injunction should be dissolved, and that

said bill be dismissed with costs, and that the receiver deliver to defendants the possession of said property, &c.

THOS. J. BRYAN,	JAMES F. BROWN,
WM. E. CHILTON,	MARY E. CHILTON,
C. W. CAMPBELL,	F. L. DOOLITTLE,
E. S. DOOLITTLE,	R. A. GOODWIN,
GEO. F. DONNELLA,	JAMES PRITCHARD,
C. E. GWINN,	O. E. GWINN,
W. W. GWINN,	RUFUS SWITZER,
GARLAND BUFFINGTON,	LILLIE HANDLEY,
W. R. GUNN,	W. H. H. HOLSWADE,
L. D. ISABEL,	OSCAR JONES,
JAMES K. ONEY,	LIZZIE MONTGOMERY,
J. D. TERRELL,	GORDON O'BIERNE,
N. SMITH,	JOHN T. WILSON,

THOS. H. H. HARVEY,

VINSON & THOMPSON, *Sols.*

STATE OF WEST VIRGINIA, *County of Cabell,* } *To wit:*

T. J. Bryan, being duly sworn *and* deposes — says: I am one of the above-named defendants and the foregoing answer is true to the best of my knowledge, except as therein stated to be upon information and belief, and so far as therein stated to be upon information and belief, I believe *them* to be true.

T. J. BRYAN.

Taken, sworn to, and subscribed before me this the 3rd day of September, 1897.

GEO. M. McDERMIT,
Notary Public.

669 EXHIBIT T T.

Mandate of U. S. Supreme Court.

(Filed Sept. 28, 1897.)

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the supreme court of appeals of the State of West Virginia, Greeting:

Whereas lately, in the supreme court of appeals of the State of West Virginia, before you or some of you, in a cause between John B. Laidley, plaintiff, and The Central Land Company of West Virginia, defendant, wherein the judgment of the said supreme court of appeals entered in said cause on the 14th day of November, A. D. 1890, was in favor of the said plaintiff, John B. Laidley, and against the said defendant, as by the inspection of the transcript of the record of the said supreme court of appeals, which was brought into the

Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and ninety-four, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was argued by counsel:

On consideration whereof it is now here ordered and adjudged by this court that the writ of error in this cause be, and the same is hereby, dismissed for the want of jurisdiction.

JUNE 3RD, 1895.

And the same is hereby remanded to you, the said judges of the said supreme court of appeals of the State of West Virginia, in order that such proceedings may be had in the said cause, in conformity with the judgment and decree of this court above stated, as, according to right and justice and the Constitution and laws of the United States, ought to had therein, the said writ of error notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of November, in the year of our
670 Lord one thousand eight hundred and ninety-five.

(Signed) JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Supreme Court of the United States.

I, James H. McKenney, clerk of the Supreme Court of the United States, do hereby certify that the foregoing — pages, numbered from 1 to 4, inclusive, contain a true copy of the mandate of the Supreme Court of the United States in the case of The Central Land Co. of West Virginia *vs.* John B. Laidley, No. 239, October term, 1894, as the same remains upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this 14th day of February, A. D. 1890.

JAMES H. McKENNEY,
[SEAL.] *Clerk of the Supreme Court of the United States.*

EXHIBIT V V.

(Filed Sept. 28, 1897.)

WEST VIRGINIA, *To wit:*

At a supreme court of appeals held in Charleston, in Kanawha county, on the 23rd day of November, 1895.

W. E. Chilton, Esq., this day presented the following mandate of the Supreme Court of the United States, which is ordered to be recorded:

Supreme Court of the United States, October Term, 1894.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY. } No. 239.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of appeals of the State of West Virginia, Greeting:

Whereas lately, in the supreme court of appeals of the State of West Virginia, before you or some of you, in a cause between
671 John B. Laidley, plaintiff, and The Central Land Company of West Virginia, defendant, wherein the judgment of the said supreme court of appeals entered in said cause on the 14th day of November, A. D. 1890, was in favor of the said plaintiff, John B. Laidley, and against the said defendant, as by the inspection of the transcript of the record of the said supreme court of appeals, which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress in such case made and provided, fully — at large appears;

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and ninety-four, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record and was argued by counsel:

On consideration whereof it is now here ordered and adjudged by this court that the writ of error in this cause be, and the same is hereby, dismissed for the want of jurisdiction (June 3rd, 1895), and the same is hereby remanded to you, the said judges of the supreme court of appeals of the State of West Virginia, in order that such proceedings may be had in the same cause in conformity with the judgment and decree of this court above stated as, according to right and justice and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of November, in the year of our Lord one thousand eight hundred and ninety-five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

A copy from the record.
Attest: O. S. LONG, *Clerk.*

General Replication to Answer.

(Filed Oct. 4, 1897.)

672 DISTRICT OF WEST VIRGINIA:

In the Circuit Court Thereof, at Parkersburg.

The replication of C. P. Huntington, special receiver of the Central Land Company of West Virginia, to the answer of Thomas J. Bryan, James F. Brown, Wm. E. Chilton, Mary E. Chilton, C. W. Campbell, F. L. Doolittle, E. S. Doolittle, R. A. Goodwin, George F. Donnella, James Pritchard, C. E. Gwinn, O. E. Gwinn, W. W. Gwinn, Rufus Switzer, Garland Buffington, Lillie Handley, W. R. Gunn, W. H. H. Holswade, L. D. Isbel, Oscar Jones, Lizzie Montgomery, Jas. K. Oney, Gordon O'Berne, J. D. Terrell, John T. Wilson, Thos. H. Harvey, N. Smith, defendants, filed in the chancery suit of said C. P. Hunti-gton, special receiver, against John B. Laidley *et al.*

The repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer of all the defendants except J. B. Laidley, for replication thereto, saith that he will aver and prove his said amended bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct; and humbly prays as in and by his said amended bill he hath already prayed.

C. P. HUNTINGTON, *Sp'l Rec.*,
By counsel, SIMMS & ENSLOW, *Att'ys.*

And at another day, to wit, on the 17th day of December, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia, *against* JOHN B. LAIDLEY and Others, } In Chancery.

673 and

THE CENTRAL LAND COMPANY OF WEST VIRGINIA *against* JOHN B. LAIDLEY and Others.

This day came C. P. Huntington, special receiver of the property of The Central Land Company, heretofore appointed by decree in

this court plaintiff in the first above cause and holder of the property of The Central Land Company, plaintiff in the second cause, and filed his petition, setting up that John B. Laidley, the defendant in each of the said causes; Z. T. Vinson and William R. Thompson, his attorneys, are proceeding to make sales of property set out in said decrees, in violation of the restraining orders entered in the cause of The Central Land Company against John B. Laidley and others on the 11th day of November, 1890, and in the cause of C. P. Huntington, special receiver, against John B. Laidley and others on the 2nd day of February, 1891, and praying that a rule be issued requiring said John B. Laidley and Z. T. Vinson and W. R. Thompson, his attorneys, to appear and show cause, if any they can, why they should not be attached for attempting to violate said injunction orders.

It is therefore ordered that the clerk of this court do issue a rule as prayed for in this petition, requiring the said John B. Laidley, Z. T. Vinson, and W. R. Thompson to appear before the judge of this court, at Charleston, at the court-room of the said United States court, on Monday, the 20th day of December, 1897, at ten (10) o'clock a. m., to show cause, if any they can, why they should not be fined and attached for their alleged contempt in violating said orders of the circuit court of the United States for the district of West Virginia, entered in the said two causes as in said petition set out, and service of a copy of this notice upon the said attorneys shall be sufficient notice of this rule.

Petition of C. P. Huntington.

(Filed Dec. 17, 1897.)

UNITED STATES OF AMERICA,
District of West Virginia.

In the Circuit Court Thereof.

674 C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia, *vs.* JOHN B. LAIDLEY and Others. } In Chancery.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA *vs.* JOHN B. LAIDLEY and Others. } In Chancery.

To the Honorable John J. Jackson, judge of the said circuit court:

The undersigned, special receiver of the Central Land Company, appointed as such by virtue of an order entered by the circuit court of the United States for the district of West Virginia, in the chancery cause of C. P. Huntington against The Central Land Company, and plaintiff in the above cause of himself, as such receiver, against John B. Laidley, would most respectfully represent unto your hon-

orable court that by decree rendered in said cause of The Central Land Company of West Virginia against John B. Laidley, and afterwards, by decree, rendered in the cause of C. P. Huntington, special receiver, against John B. Laidley and others, John B. Laidley and others were restrained and enjoined from proceeding to enforce certain judgments in ejectment recovered by them in the said circuit court of Cabell county, West Virginia, against The Central Land Company, and also against certain vendees of the Central Land Company who were in possession of certain lots sold them by the said Central Land Company, all of which will fully and at large appear from the record of the said two causes now in this court remaining; that the order staying the execution of the decrees in the case of The Central Land Company against John B. Laidley and others was entered on the 11th day of November, 1890, and the order staying proceedings on the judgment in the case of C. P. Huntington, special receiver, against John B. Laidley and others on the 2nd day of February, 1891; that the said John B. Laidley, not regarding the orders and decrees heretofore made in said cause, has procured and caused William R. Thompson, special commissioner of the circuit court of Cabell county, to advertise—

675 Lot No. 18 of block No. 67, belonging to J. L. M. Curry and Albert Napier;

Lots 8 and 9 of block 68, belonging to Catherine Neff;

Lots No. 14 of block No. 68, belonging to A. L. Williams;

Lot No. 10 of block No. 68, belonging to Clay Greenwell;

Lot No. 4 of block No. 67, belonging to R. T. Harvey;

Lot No. 6 of block No. 68, belonging to George Peco;

Lots 1 & 2 of block No. 67, belonging to the heirs of E. T. Mitchell;

Lot No. 4 of block No. 68, belonging to Michael O'Brien;

Lots 15 & 16 of block No. 67, belonging to J. M. Noble's estate;

Lot No. 13 of block No. 68, belonging to S. R. Hall;

Lots 8 & 9 of block No. 67, belonging to S. J. Love;

Lot No. 11 of block No. 68, belonging to S. F. Jobe;

Lot No. 12 of block No. 68, belonging to S. A. and C. F. Remele;

Lot No. 5 of block No. 68, belonging to Jasper Jackson,

for sale under said judgments in ejectment, as will appear from copies of advertisements of said sales printed in the Huntington Advertiser, hereto attached; that the said John B. Laidley and each and all of the owners of said lots so advertised for sale are parties defendant to both of said chancery suits and their rights are subject to adjudication by the said United States court which has jurisdiction of the said parties and of the subject-matter.

Your petitioner says that if the lots are sold and the said John B. Laidley gets possession of the same, he, as special receiver, will immediately be proceeded against by the said parties under the warranties contained in the deeds from the said Central Land Company to the said purchasers of the said lots, and he will be put to large costs in defending separate suits, when all of the said facts growing out of the rights of the said John B. Laidley and all of the parties,

owners of said lots, are to be and can be fully adjudicated and determined in the said chancery suits by the circuit court of the United States, whose receiver your petitioner is.

676 He therefore prays that a rule be issued requiring the said John B. Laidley to appear before this honorable court and show cause why he should not be fined and attached for his contempt and in violating the injunction order entered in said causes restraining him from proceeding to make sales of said real estate under said judgment, and he also prays that an order be entered requiring the said W. R. Thompson, who is undertaking to act and make sales of said property, to appear and show cause, if any he can, why he should not be restrained from proceeding to make such sales of said property.

Your petitioner further prays, as he has in his bill against John B. Laidley and as the Central Land Company has in its bill prayed, that his rights and the rights of the said Central Land Company as set up in said bills be protected, and that pending the final adjudication of said causes the defendant John B. Laidley be required to observe and comply with the requirements of the orders of this court made in said cause. All of which is respectfully submitted.

C. P. HUNTINGTON,
Spec. Receiver,
By ATTORNEY & AGENT.

STATE OF WEST VIRGINIA, }
Cabell County, } *ss:*

B. W. Foster, being first duly sworn, says he is agent of the Central Land Company and of C. P. Huntington, special receiver, and that the facts set out in the foregoing petition are true, as he verily believes.

B. W. FOSTER.

Taken, sworn to, and subscribed before me, in my county, this 27th day of November, 1897.

R. M. BAKER,
Notary Public.

677 *Commissioner's Sale of Real Estate.*

In the Circuit Court of Cabell County, West Virginia.

J. B. LAIDLEY
against
JASPER JACKSON. } In Ejectment.

By virtue of orders made in the above entitled action of ejectment on the 15th day of December, 1890, and on the 21st day of October, 1897, I, the undersigned special commissioner appointed for the purpose by said last order, shall on the 16th day of December, 1897, at 2 o'clock p. m. of that day at the front door of the court-house of said Cabell county offer for sale at public auction to the highest bidder the following property mentioned and described in said action,

viz: Lot number 5 in block number 68, being 30 feet front by 160 feet deep to an alley, as shown on a certain map of the city of Huntington, West Virginia, made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county on the 6th day of December, 1871, upon the following terms: One-half cash on the day of sale and upon the residue a credit of six months, the purchaser or purchasers to give bonds with security for the payment thereof and the legal title to be reserved as additional security for their said payment.

WM. R. THOMPSON,
Special Commissioner.

It is hereby certified that the above-named special commissioner has given bond as required by law.

R. W. McWILLIAMS, *Clerk.*

VINSON & THOMPSON, *Attorneys.* 11-23-4w

Commissioner's Sale of Real Estate.

In the Circuit Court of Cabell County, West Virginia.

J. B. LAIDLEY
against
S. A. & C. F. REMLEY. } In Ejectment.

By virtue of orders made in the above-entitled action of ejectment, on the 15th day of December, 1890, and the 21st day of October, 1897, I, the undersigned special commissioner appointed for the purpose by said last order, shall on the 16th day of December, 1897, at 2 o'clock p. m. of that day, at the front door of the court-house of said Cabell county offer for sale, at public auction, to the highest bidder, the following property mentioned and described in said action, viz: Lot number 12, in block number 68, being 30 feet front by 160 feet deep, as shown on a certain map of the city of Huntington, West Virginia, made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county on the 6th day of December, 1871, upon the following terms: One-half cash on the day of sale, and upon the residue a credit of six months, the purchaser or purchasers to give bonds with security for the payment thereof and the legal title to be reserved as additional security for their said payment.

WM. R. THOMPSON,
Special Commissioner.

It is hereby certified that the above-named special commissioner has given bond as required by law.

R. W. McWILLIAMS, *Clerk.*

VINSON & THOMPSON, *Attorneys.* 11-23-4w

Commissioner's Sale of Real Estate.

In the Circuit Court of Cabell County, West Virginia.

J. B. LAIDLEY
against
J. L. M. CURRY and ALBERT NAPIER. } In Ejectment.

By virtue of orders made in the above-entitled action of ejectment on the 15th day of December, 1890, and the 21st day of October, 1897, I, the undersigned special commissioner appointed for the purpose by said last order, shall on the 16th day of December, 1897, at 2 o'clock p. m. of that day, at the front door of the court-house of said Cabell county offer for sale, at public auction, to the highest bidder, the following property mentioned and described in said action, viz: Lot 18, block 67, with its appurtenances, as shown on a certain map of the city of Huntington, West Virginia, made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county on the 6th day of December, 1871, upon the following terms: One-half cash on the day of sale, and upon the residue a credit of six months, the purchaser or purchasers to give bonds with security for the payment thereof and the legal title to be reserved as additional security for their said payment.

WM. R. THOMPSON,
Special Commissioner.

It is hereby certified that the above-named special commissioner has given bond as required by law.

R. W. McWILLIAMS, *Clerk.*

VINSON & THOMPSON, *Attorneys.* 11-23-4w

Commissioner's Sale of Real Estate.

In the Circuit Court of Cabell County, West Virginia.

J. B. LAIDLEY
against
CATHERINE KNEFF. } In Ejectment.

By virtue of orders made in the above-entitled action of ejectment on the 15th day of December, 1890, and on the 21st day of October, 1897, I, the undersigned special commissioner, appointed for the purpose by said last order, shall on the 16th day of December, 1897, at 2 o'clock p. m. of that day, at the front door of the court-house of said Cabell county, offer for sale at public auction to the highest bidder the following property mentioned and described in said action, viz: Lots numbers 8 and 9 in block 68, being each 30 feet wide by 160 feet deep to an alley, as shown on a certain map of the

city of Huntington, West Virginia, made by Rufus Cook, surveyor' a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county on the 6th day of December, 1871, upon the following terms: One-half cash on the day of sale and upon the residue a credit of six months, the purchaser or purchasers to give bonds with security for the payment thereof and the legal title to be reserved as additional security for their said payment.

WM. R. THOMPSON,
Special Commissioner.

It is hereby certified that the above-named special commissioner has given bond as required by law.

R. W. McWILLIAMS, *Clerk.*

VINSON & THOMPSON, *Attorneys.* 11-23-4w

678 *Commissioner's Sale of Real Estate.*

In the Circuit Court of Cabell County, West Virginia.

J. B. LAIDLEY
against
A. L. WILLIAMS. } In Ejectment.

By virtue of orders made in the above-entitled action in ejectment on the 15th day of December, 1890, and the 21st day of October, 1897, I, the undersigned special commissioner appointed for the purpose by said last order, shall, on the 16th day of December, 1897, at 2 o'clock p. m. of that day, at the front door of the court-house of said Cabell county, offer for sale, at public auction to the highest bidder, the following property mentioned and described in said action, viz: Lot No. 14, in block number 68, being 30 feet wide by 160 feet deep to an alley, as shown on a certain map of the city of Huntington, West Virginia, made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county on the 6th day of December, 1871, upon the following terms: One-half cash in hand on the day of sale, and the residue thereof with interest in six months, the purchaser or purchasers to give bonds with security for the payment thereof and the legal title to be reserved as additional security for their said payment.

WM. R. THOMPSON,
Special Commissioner.

It is hereby certified that the above-named special commissioner has given bond as required by law.

R. W. McWILLIAMS, *Clerk.*

VINSON & THOMPSON, *Attorneys.* 11-23-4w

Commissioner's Sale of Real Estate.

In the Circuit Court of Cabell County, West Virginia.

J. B. LAIDLEY
against
CLAY GREENWELL. } In Ejectment.

By virtue of orders made in the above-entitled action of ejectment on the 15th day of December, 1890, and the 21st day of October, 1897, I, the undersigned special commissioner appointed for the purpose by said last order, shall on the 16th day of December, 1897, at 2 o'clock p. m. of that day, at the front door of the court-house of said Cabell county, offer for sale, at public auction, to the highest bidder, the following property mentioned and described in said action, viz: Lot number 10, in block 68, being 30 feet by 160 feet deep to an alley, as shown on a certain map of the city of Huntington, West Virginia, made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county on the 6th day of December, 1871, upon the following terms: One-half cash on the day of sale and upon the residue a credit of six months, the purchaser or purchasers to give bond with security for the payment thereof and the legal title to be reserved as additional security for the said payment.

WM. R. THOMPSON,
Special Commissioner.

It is hereby certified that the above-named special commissioner has given bond as required by law.

R. W. McWILLIAMS, *Clerk.*

VINSON & THOMPSON, *Attorneys.* 11-23-4w

Commissioner's Sale of Real Estate.

In the Circuit Court of Cabell County, West Virginia.

J. B. LAIDLEY
against
R. T. HARVEY. } In Ejectment.

By virtue of orders made in the above-entitled action of ejectment on the 15th day of December, 1890, and on the 21st day of October, 1897, I, the undersigned special commissioner appointed for the purpose by said last order, shall on the 16th day of December, 1897, at 2 o'clock p. m. of that day, at the front door of the court-house of said Cabell county offer for sale at public auction to the highest bidder the following property mentioned and described in said action, viz: Lot number 4 in block number 67, being 30 feet front by 140 feet deep, as shown on a certain map of the city of Huntington, West Virginia, made by Rufus Cook, surveyor, a litho-

graph copy of which was filed in the office of the clerk of the county court of Cabell county on the 6th day of December, 1871, upon the following terms: One-half cash on the day of sale and upon the residue a credit of six months, the purchaser or purchasers to give bonds with security for the payment thereof and the legal title to be reserved as additional security for their said payment.

WM. R. THOMPSON,
Special Commissioner.

It is hereby certified that the above-named special commissioner has given bond as required by law.

R. W. McWILLIAMS, *Clerk.*

VINSON & THOMPSON, *Attorneys.* 11-23-4w

Commissioner's Sale of Real Estate.

In the Circuit Court of Cabell County, West Virginia.

J. B. LAIDLEY
against
J. M. NOBLE ET AL. } In Ejectment.

By virtue of orders made in the above-entitled action of ejectment on the 15th day of December, 1890, and the 21st day of October, 1897, I, the undersigned special commissioner, appointed for the purpose of said last order, shall on the 16th day of December, 1897, at 2 o'clock p. m. of that day, at the front door of the court-house of said Cabell county offer for sale, at public auction, to the highest bidder the following property mentioned and described in said action, viz: Lots 15 and 16, in block 67 on the north side of Third avenue, between Sixth and Seventh streets, each 30 x 140 feet deep to an alley, and also lot 10, block 67, on the south side of Second avenue, 30 x 140 feet deep to an alley, as shown on a certain map of the city of Huntington, West Virginia, made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county on the 6th day of December, 1871, upon the following terms: One-half cash on the day of sale, and upon the residue a credit of six months, the purchaser or purchasers to give bonds with security for the payment thereof and the legal title to be reserved as additional security for their said payment.

WM. R. THOMPSON,
Special Commissioner.

It is hereby certified that the above-named special commissioner has given bond as required by law.

R. W. McWILLIAMS, *Clerk.*

VINSON & THOMPSON, *Attorneys.* 11-23-4w

679 *Commissioner's Sale of Real Estate.*

In the Circuit Court of Cabell County, West Virginia.

J. B. LAIDLEY
against
MICHAEL O'BRIEN. } In Ejectment.

By virtue of orders made in the above-entitled action of ejectment, on the 15th day of December, 1890, and the 21st day of October, 1897, I, the undersigned special commissioner appointed for the purpose by said last order, shall on the 16th day of December, 1897, at 2 o'clock p. m. of that day, at the front door of the court-house of said Cabell county offer for sale at public auction, to the highest bidder, the following property mentioned and described in said action, viz: Lot number 4, in block number 68, being 30 feet wide by 160 feet deep to an alley, as shown on a certain map of the city of Huntington, West Virginia, made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county, on the 6th day of December, 1871, upon the following terms: One-half cash on the day of sale, and upon the residue a credit of six months, the purchaser or purchasers to give bonds with security for the payment thereof and the legal title to be reserved as additional security for their said payment.

WM. R. THOMPSON,
Special Commissioner.

It is hereby certified that the above-named special commissioner has given bond as required by law.

R. W. McWILLIAMS, *Clerk.*

VINSON & THOMPSON, *Attorneys.* 11-23-4w

Commissioner's Sale of Real Estate..

In the Circuit Court of Cabell County, West Virginia.

J. B. LAIDLEY
against
E. T. MITCHELL. } In Ejectment.

By virtue of orders made in the above-entitled action of ejectment on the 17th day of December, 1890, and the 21st day of October, 1897, I, the undersigned special commissioner appointed for the purpose by said last order, shall on the 16th day of December, 1897, at 2 o'clock p. m. of that day, at the front door of the court-house of said Cabell county offer for sale at public auction to the highest bidder the following property mentioned and described in said action, viz: Lots numbers 13 and 14 in block number 67, each

being 30 feet front by 140 feet deep, to an alley, as shown on a certain map of the city of Huntington, W. Va., made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county on the 6th day of December, 1871, upon the following terms: One-half cash on the day of sale, and upon the residue a credit of six months.

The purchaser or purchasers to give bonds with security for the payment thereof and the legal title to be reserved as additional security for their said payment.

WM. R. THOMPSON,
Special Commissioner.

It is hereby certified that the above-named special commissioner has given bond as required by law.

R. W. McWILLIAMS, *Clerk.*

VINSON & THOMPSON, *Attorneys.* 11-23-4w

Commissioner's Sale of Real Estate.

In the Circuit Court of Cabell County, West Virginia.

J. B. LAIDLEY
against
GEORGE PEKO. } In Ejectment.

By virtue of orders made in the above-entitled action of ejectment, on the 17th day of December, 1890, and the 21st day of October, 1897, I, the undersigned special commissioner appointed for the purpose by said last order, shall on the 16th day of December, 1897, at 2 o'clock p. m. of that day, at the front door of the court-house of said Cabell county offer for sale, at public auction, to the highest bidder, the following property mentioned and described in said action, viz: Lot number 6, in block number 68, being 30 feet wide by 160 feet to an alley, as shown on a certain map of the city of Huntington, West Virginia, made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county on the 6th day of December, 1871, upon the following terms: One-half cash on the day of sale, and upon the residue a credit of six months, the purchaser or purchasers to give bonds with security for the payment thereof and the legal title to be reserved as additional security for their said payment.

WM. R. THOMPSON,
Special Commissioner.

It is hereby certified that the above-named special commissioner has given bond as required by law.

R. W. McWILLIAMS, *Clerk.*

VINSON & THOMPSON, *Attorneys.* 11-23-4w

Commissioner's Sale of Real Estate.

In the Circuit Court of Cabell County, West Virginia.

J. B. LAIDLEY
against
S. R. HALL. } In Ejectment.

By virtue of orders made in the above-entitled action of ejectment, on the 15th day of December, 1890, and the 21st day of October, 1897, I, the undersigned special commissioner appointed for the purpose by said last order, shall on the 16th day of December, 1897, at 2 o'clock p. m. of that day, at the front door of the court-house of said Cabell county offer for sale, at public auction, to the highest bidder, the following property mentioned and described in said action, viz: Lot number 13, in block number 68, and is 30 feet wide by 160 feet deep, as shown on a certain map of the city of Huntington, West Virginia, made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county, on the 6th day of December, 1871, upon the following terms: One-half cash on the day of sale, and upon the residue a credit of six months, the purchaser or purchasers to give bonds with security for the payment thereof and the legal title to be reserved as additional security for their said payment.

WM. R. THOMPSON,
Special Commissioner.

It is hereby certified that the above-named special commissioner has given bond as required by law.

R. W. McWILLIAMS, *Clerk.*

VINSON & THOMPSON, *Attorneys.* 11-23-4w

680 *Commissioner's Sale of Real Estate.*

In the Circuit Court of Cabell County, West Virginia.

J. B. LAIDLEY
against
S. J. LOVE ET AL. } In Ejectment.

By virtue of orders made in the above-entitled action of ejectment on the 15th day of December, 1890, and the 21st day of October, 1897, I, the undersigned special commissioner, appointed for the purpose by said last order, shall on the 16th day of December, 1897, at 2 o'clock p. m. of that day at the front door of the courthouse of said Cabell county offer for sale at public auction to the highest bidder the following property mentioned and described in said action, viz: Lots 8 and 9 of block 67, as shown on a certain map of the city of Huntington, West Virginia, made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office

of the clerk of the county court of Cabell county on the 6th day of December, 1871, upon the following terms: One-half cash on the day of sale and upon the residue a credit of six months, the purchaser or purchasers to give bond with security for the payment thereof and the legal title to be reserved as additional security for their said payment.

WM. R. THOMPSON,
Special Commissioner.

It is hereby certified that the above-named special commissioner has given bond as required by law.

R. W. McWILLIAMS, *Clerk.*

VINSON & THOMPSON, *Attorneys.* 11-23-4w

Commissioner's Sale of Real Estate.

In the Circuit Court of Cabell County, West Virginia.

J. B. LAIDLEY
against
S. F. JOBE ET ALS. } In Ejectment.

By virtue of orders made in the above-entitled action of ejectment on the 5th day of December, 1890, and on the 21st day of October, 1897, I, the undersigned special commissioner appointed for the purpose by said last order, shall on the 16th day of December, 1897, at 2 o'clock p. m. of that day at the front door of the court-house of said Cabell county offer for sale at public auction to the highest bidder the following property mentioned and described in said action, viz: Lot number 11 of block number 68, being 30 feet front by 160 feet deep to an alley, as shown on a certain map of the city of Huntington, West Virginia, made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county on the 6th day of December, 1871, upon the following terms: One-half cash on the day of sale and upon the residue a credit of six months, the purchaser or purchasers to give bonds, with security for the payment thereof and the legal title to be reserved as additional security for their said payment.

WM. R. THOMPSON,
Special Commissioner.

It is hereby certified that the above-named special commissioner has given bond as required by law.

R. W. McWILLIAMS, *Clerk.*

VINSON & THOMPSON, *Attorneys.* 11-23-4w

Rule.

(The rule awarded in the foregoing order is not now found among the papers of my said office.—Clerk.)

681 And at another day, to wit, on the 20th day of December, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Sp'l Rec., *vs.* JOHN B. LAIDLEY. } In Equity.

This day came Z. T. Vinson and W. R. Thompson and John B. Laidley and moved the court to discharge the rule issued against them, and in support of said motion filed the return of said W. R. Thompson, special commissioner, and John B. Laidley, together with the exhibits filed therewith; and upon consideration the hearing upon said rules is set peremptorily for the 20th day of January, 1898, at Parkersburg.

Answer of W. R. Thompson.

(Filed Dec. 20, 1897.)

In the Circuit Court of the United States for the District of West Virginia.

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia, Plaintiff, *vs.* JOHN B. LAIDLEY ET AL., Defendants.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA, Plaintiff, *vs.* JOHN B. LAIDLEY ET AL., Defendants. } In Equity.

To the honorable judges of the said court:

This respondent, for answer to a rule heretofore issued in the above-entitled causes and served upon respondent, would respectfully represent unto your honors:

That heretofore, to wit, on the 3rd day of November, 1883, John B. Laidley instituted in the circuit court of Cabell county, West Virginia, sixteen actions of ejectment for the recovery of the
682 several lots set out and described in the petition of C. P. Huntington filed in the above-entitled causes and upon which the rule aforesaid issued; that said suits were regularly matured and trials thereof had and a judgment in each entered in favor of the plaintiff on the 10th day of September, 1890; and the plaintiff in said actions of ejectment not being willing to pay the defendants for the improvements upon said lots, but electing to take a judgment for a sum ascertained by the jury to be the value of the said lots without the improvements, judgment was entered accordingly; and the defendants not having paid the said judgments against them in the said several actions of ejectment, afterwards, on the 15th day of December, 1890, the circuit court by an order en-

tered in each of said actions appointed C. W. Campbell and John H. Holt special commissioners to make sale of the several lots for the payment of the several judgments theretofore rendered against them. The said Campbell and Holt having failed to make such sale, on another day, to wit, on the 21st day of October, 1897, the said circuit court of Cabell county, West Virginia, by an order entered in each of the actions aforesaid appointed respondent to execute and carry into effect the order of the 15th day of December, 1890, by making sale of the several lots; all of which will fully appear by a certified transcript of the record in each of said actions filed as a part of this answer, marked "Exhibit A."

That in pursuance of the appointment of respondent as special commissioner as aforesaid to make the sales aforesaid he executed before the clerk of the circuit court of Cabell county, West Virginia, a bond in the penalty required by the order and with security approved by the clerk.

Respondent would further show that he was not in the city of Huntington at the time of the entering of the order last aforesaid appointing him as special commissioner to make the sales aforesaid; that he knew nothing of said order nor of any intention to have him appointed as such commissioner until his return some time after the said order had been entered; that he had no knowledge or information whatever that an injunction had ever
683 been awarded prohibiting the sale of the lots aforesaid, but that about the time he was preparing to advertise the said lots he was told by some one, whose name he does not now remember, that there was such an injunction, and thereupon he caused a search for the same to be made by the deputy clerk of this honorable court in the clerk's office, at Parkersburg, where said suits are pending, and received a letter from said clerk informing him that no such injunction had been awarded, so far as he could discover from the records in the two cases in which this rule has been issued, and thereupon he proceeded to advertise the said lots for sale, and was proceeding to execute the order of the circuit court of Cabell county, West Virginia, when this rule was served upon him; that thereupon respondent postponed said sale to the 23rd day of December, 1897.

Respondent avers that the circuit court of Cabell county, West Virginia, is a court of general jurisdiction; that John B. Laidley is a resident and citizen of the county of Cabell, and was at the time of the institution of the actions of ejectment aforesaid; that the lots of land which respondent had advertised for sale are situated in said county, and that each of the defendants in said actions of ejectment were at the time of the institution of said suit residents of said county; that said court had jurisdiction of the subject-matter of said suits, and that said judgments were entered and said order of sale made long prior to the 28th day of February, 1891.

Further answering, the respondent says that after the service of the rule aforesaid upon him he reported that fact and the postponement of the sale aforesaid to the circuit court of Cabell county; whereupon the judge of that court construed said order of the 28th

of February, 1891, as having no application to the order of sale under which your respondent is acting, and directed your respondent to proceed to execute the order theretofore made by the circuit court of Cabell county, as will appear by a certified copy of said order here filed as part hereof, marked "Exhibit B."

Respondent disclaims all intention or desire to disregard any of the orders of this honorable court or to be in contempt of the same in any way whatever, but he finds himself in the embar-
684 ras-ing position, if your honors should hold that the order of the 28th of February, 1891, prohibits him from executing the order of the circuit court of Cabell county, West Virginia, or being liable to contempt proceedings by two separate tribunals in two separate jurisdictions, to each of which he owes obedience; and, having fully answered, he prays hence to be dismissed.

W. R. THOMPSON.

Subscribed and sworn to before me in my office, at Parkersburg, this 24th day of January, 1898.

L. B. DELLICKER, *Clerk.*

EXHIBIT WITH ANSWER OF W. R. THOMPSON.

(Filed Dec. 20, 1897.)

STATE OF W. VA.:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of September, 1890.

JOHN B. LAIDLEY
vs.
S. A. REMLEY. } In Ejectment.

Be it remembered that heretofore, to wit, at rule*d* held in the clerk's office of the circuit court of Cabell county on the first Monday in November, 1883, the plaintiff filed his declaration and notice against the defendant; which declaration, notice, and the sheriff's return and rules thereon endorsed are in the words and figures following, to wit:

Declaration.

STATE OF WEST VIRGINIA, *To wit:*

Circuit Court of Cabell County.

John B. Laidley, plaintiff, complains of S. A. Remley, defendant, of a plea of trespass, for this: that, to wit, on the 1st day of February, 1882, the plaintiff was seized of an estate in fee and possessed of a certain tract of land situate, lying, and being in the city of Huntington, county of Cabell, State of West Virginia, bounded on the
685 north by the Ohio river, on the east in part by Seventh street, formerly known as the Beuhring lane, and extending beyond

Four-pole creek on the south, containing 240 acres, and more particularly described as follows: Beginning at a stake, corner of lot No. 3, on the Ohio river, S. 19¼ E. 377 poles to a stake, from which a small sycamore stands S. 1½ E. 2 poles 3 links; N. 70¾ E. 1 pole 24 links to a stake, from which the above sycamore stands S. 33 W. 3 poles and 27 links, and another stands S. 2½ E. 3 poles and 6 links; thence S. 13 E. 120 poles to two white oaks, S. 30 W. 36 poles to a white oak among some rocks on a point, south 70 W. 50 poles to a black oak and a white oak on a point, S. 11½ W. 120 poles to two white oaks on a hill, S. 54 E. 62 poles to two black oaks, N. 40 E. 150 poles to chestnut oak near the top of a ridge, N. 5 W. 180 poles to a white oak and two beeches, N. 21 W. 8 poles to the southeast corner of the Brown tract; thence N. 19 W. 398 poles to a stake on the Ohio river, S. 73 W. 47 poles and 14 links to the beginning, being lot No. 4, allotted to Rebecca J. Everett under and by virtue of two decrees of the circuit court of Cabell county, entered at the November term, 1862, and the March term, 1863, on the partition of the estate of Isaac Frampton, Jr., and conveyed to her by John Laidley, special commissioner, and by her sold and conveyed to S. H. Pennybacker, and by the latter sold and conveyed to the plaintiff; and, being so possessed of the said tract of land, the defendants afterwards, to wit, on the 1st of March, 1882, entered into the same and unlawfully withhold from the plaintiff the possession thereof, to the damage of the plaintiff $10,000, and therefore he brings his suit.

JOHN B. LAIDLEY, *P. P.*

Notice.

To S. A. Remley:

You are notified that the foregoing declaration in ejectment will be filed against you in the clerk's office of the circuit court of Cabell county at rules to be held on the first Monday in November, 1883, and unless you appear and plead thereto within the time prescribed by law judgment will be given against you.

JOHN B. LAIDLEY.

686 *Sheriff's Return on Declaration.*

I served the within notice and declaration on S. A. Remley on the 3rd day of Nov., 1883, by giving a true copy thereof to C. F. Remley, her husband, at the usual place of abode of said S. A. Remley, she being over 16 years of age, giving information of the purport to him, she being absent from home.

E. KYLE, *S. C. C.*,
By E. S. BUFFINGTON, *Dep-ty.*

Rules Endorsed.

1883, November rules.—Declaration and notice filed and service proved by the return of the sheriff thereon endorsed, and a rule is awarded the plaintiff against the defendant to appear and plead at the next rules.

1883, December rules.—The defendant failing to apper and plead, it is ordered that his default be entered and judgment for the plaintiff.

And on another day, to wit:

At a circuit court held for Cabell county, at the court house thereof, on the 2nd day of Jan'y, 1884, there was an order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
S. A. REMLEY. } In Ejectment.

This day comes the defendant, S. A. Remley, by *his* attorneys, Simms and Enslow, and moved to quash the notice in this action, and demurred to the declaration, in which the plaintiff joined, and for further plea says that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff in his declaration, and allowed to file *his* disclaimer at the next term to a part of the said premises.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1885, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
S. A. REMLEY. } In Ejectment.

687 The judge of this court being so situated as to render it improper for him to try this action, on motion of the plaintiff the same is ordered to be removed and is removed to the circuit court of the county of Summers, to be tried and determined according to law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. } In Ejectment.

SAME
vs.
SAME. } In Ejectment.

SAME
vs.
GEO. PEKO. } In Ejectment.

SAME *vs.* MICHAEL O'BRIEN.	In Ejectment.
SAME *vs.* S. R. HALL.	In Ejectment.
SAME *vs.* JASPER JACKSON ET AL.	In Ejectment.
SAME *vs.* CATHERINE KNEFF.	In Ejectment.
SAME *vs.* A. L. WILLIAMS.	In Ejectment.
SAME *vs.* WILLIAM DUSTER.	In Ejectment.
SAME *vs.* S. F. JOBE.	In Ejectment.
SAME *vs.* ROB'T WOODSON ET AL.	In Ejectment.
SAME *vs.* ALBERT NAPIER ET AL.	In Ejectment.
SAME *vs.* J. M. NOBLE ET AL.	In Ejectment.
SAME *vs.* S. A. REMLEY.	In Ejectment.
SAME *vs.* C. F. REMLEY.	In Ejectment.
SAME *vs.* CLAY GREENWELL.	In Ejectment.
SAME *vs.* MARGARET SANDS.	In Ejectment

SAME
vs.
S. J. LOVE ET AL. } In Ejectment.

SAME
vs.
E. T. MITCHELL. } In Ejectment.

SAME
vs.
R. T. HARVEY. } In Ejectment.

The foregoing nineteen cases having been remanded to *the* this court from the circuit court of Summers county, on motion of plaintiff the same are now docketed and continued until the next term of this court.

688 And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 10th day of Sept., 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
S. A. REMLEY } In Ejectment. Consolidated.

and

JOHN B. LAIDLEY
vs.
C. F. REMLEY. } In Ejectment.

This day came again the parties, by their attorneys, and thereupon the defendants filed *his* claims for permanent improvements placed upon the land in controversy, and the plaintiff asked that the value of his estate in the premises without the improvements may also be ascertained, which is accordingly ordered. Thereupon came a jury, to wit, B. F. Johnson, John A. Morris, Harrison Deston, Wm. Cooper, E. G. Blankenship, J. A. Walkinshaw, T. J. Gwinn, Chas. Collins, Jeremiah Ball, Rezin Swann, M. T. Blankenship, and Jno. H. Williams, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein and a true verdict render according to the evidence, and after hearing the evidence and arguments of counsel retired to their rooms to consider of their verdict, and after some time returned into court and upon their oaths do say: We, the jury, find for the plaintiff, John B. Laidley, the following-described parcel of land, being a part of the land in the declaration mentioned, to wit: All that certain lot of land situated on the south side of 3rd avenue between 6th and 7th streets, in the city of Huntington, and designated on a certain map of said city made by Rufus Cook, surveyor, a lithograph copy of which was filed in the office of the clerk of the county court of Cabell county on the 6th day of December, 1871, and

designated thereon as lot No. 12, in block No. 68, being 30 feet
689 front by 160 feet deep, and that the plaintiff has an estate in fee-simple therein. We further find that the value of plaintiff's estate in the premises without the improvements is $500.00; also, after setting off the amount allowed the plaintiff for the annual value of said premises against the *the* amount allowed the defendants for improvements, we find for the defendant- the sum of $1,500.00. And thereupon said plaintiff, by his attorney, elected to relinquish his estate in the premises to the defendant- at the value so ascertained.

It is therefore considered by the court that the said defendant- henceforth holds all the estate the plaintiff had in said premises above described at the commencement of this action, provided *he* pay therefor the said sum of $500.00, the value of said estate, in manner aforesaid assessed, with interest thereon from this date. The said sum, with interest, shall be paid to the said plaintiff on or before the first day of the next term of this court; and if not so paid within said time, then the court reserves the right to order a sale of said premises to enforce said payment. It is further considered by the court that the plaintiff recover against said defendant- his cos- about the prosecution of his suit in that behalf expended, including $5.00 as allowed by law.

And on another day, to wit:

At a circuit court held for Cabell county, at the court-house thereof, on the 15th day of December, 1890, there was an order made and entered in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
S. A. and C. F. REMLEY. } In Ejectment.

This day came again the parties, by their attorneys, and the defendants, not having paid the sum of $500.00 adjudged against them at the last term of this court, nor any part thereof, nor the costs of this action: therefore, on motion of the plaintiff, by his attorney, it is considered by the court that the said real estate, being lot No. 12 of block 68, with its appurtenances, be sold at public auction, to the highest bidder, at the front door of the court-house, on the terms of one-half of the purchase-money cash in hand on day of sale and the residue thereof, with interest, in six months, the
690 purchaser giving his note for the deferred payment, with good personal security, and the legal title to said land retained till the same is paid for further security.

And John H. Holt and C. W. Campbell are hereby appointed commissioners, with direction and power to carry out this order by making said sale; but before acting they shall give bond before the clerk of this court in the penalty of $500.00, with good security, to be approved by said clerk, with condition as prescribed by law. They shall give at least four weeks' notice of the time, place, manner, and terms of said sale by publication thereof in the Huntington

Advertiser, a weekly newspaper printed in this county, and posting a copy of such notice on the front door of the court-house of this county for at least 20 days prior to day of sale, and they shall report their action under this order to this court for approval or rejection.

STATE OF WEST VIRGINIA, *County of Cabell,* } *To wit:*

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a true transcript of the record and proceedings had in an action of ejectment lately determined in said circuit court, wherein John B. Laidley was plaintiff and S. A. Remley was defendant.

Given under my hand this 21st day of April, 1891.

B. C. WILSON,
Clerk Cir. Court, Cabell Co.

EXHIBIT WITH ANSWER OF W. R. THOMPSON.

(Filed July 20, 1897.)

And on another day, to wit, on the 21st day of October, 1897, at a circuit court continued and held for Cabell county, at the court-house thereof, there was an order made and entered herein, which is in the words and figures following, to wit:

JOHN B. LAIDLEY *vs.* S. A. REMELY. } In Ejectment.

691 This day came again the parties to this suit; and, it appearing to the court that Commissioners John H. Holt and C. W. Campbell having failed to execute the order of sale herein made and entered on the 15th day of December, 1890, and for reasons appearing to the court, William R. Thompson is hereby appointed a special commissioner instead of John H. Holt and C. W. Campbell to sell said property and execute said order of sale, first having given bond and complied in all respects with the terms and conditions of said order of sale referred to, and report his proceedings hereunder to the next term of the circuit court of Cabell county, West Virginia.

In the Circuit Court of Cabell County, West Virginia.

To the Honorable E. S. Doolittle, judge of said court:

Your special commissioner, heretofore appointed by an order entered in sixteen separate actions of ejectment pending in said court, in all of which John B. Laidley was plaintiff and various parties were defendant, would respectfully report to your honor that, in accordance with the direction in the order appointing him special commissioner, he advertised each of the lots for sale in the manner

and for the time required by the said order and fixed the day of sale for the 16th of December, 1897; that before the day of sale arrived he was served with a rule, issued by the circuit court of the United States, procured upon the application of C. P. Huntington, thorugh F. B. Enslow, his attorney, commanding him to appear at Charleston on Monday, the 20th day of December, 1897, to show cause why he should not be fined for contempt of the said court in disobeying an injunction which had by the said court been awarded, on the 28th day of February, 1891, in the chancery cause of C. P. Huntington, special receiver of the Central Land Company of West Virginia, against John B. Laidley and others, pending in said court, a copy of which order is hereto attached as a part of this report.

That thereupon your commissioner postponed said sale until Thursday, the 23rd day of December, 1897, and now lays the facts before your honor and asks for instructions as to his further proceedings.

A. R. THOMPSON,
Special Commissioner.

692 *Order Entered February 28th*, 1891.

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia,
vs.
JOHN B. LAIDLEY ET ALS. } In Equity.

This day came the complainant, C. P. Huntington, special receiver, by Jackson & Yeaton and Simms & Enslow, his attorneys, and presented his bill, verified by affidavit, in open court, praying, among other things, an injunction against John B. Laidley, C. W. Campbell, J. E. Irwin, and W. S. Laidley, enjoining them and each of them, their agents, servants, and attorneys, from any interference whatever with the possession of the complainant as special receiver of the tract of two hundred and forty (240) acres of land known as lot No. 4 of Frampton land, in the city of Huntington, as described in the bill and exhibits, or any part thereof.

On consideration whereof the bill is ordered to be filed; and it appearing that there is danger of irreparable injury from delay, a temporary injunction is allowed as prayed for, restraining, enjoining, and inhibiting the said John B. Laidley, C. W. Campbell, J. E. Irwin, and W. S. Laidley and each of them, their agents, servants, and attorneys, from interfering in any manner whatsoever with the possession of the said C. P. Huntington, special receiver of the said tract of two hundred and forty (240) acres of land, less one (1) acre, or any part thereof, known as oot No. 4 of the Frampton land, as described and set out in the bill and exhibits, and from doing any act which will tend to affect their rights of said special receiver to the possession of said land; and also restraining them and each of them, their agents, servants, and attorneys, from proceeding to assert and enforce any claims against the said several lots in said city of Huntington sold by said Central Land Company out of said

two hundred and forty (240) acres tract of land, as set out in said bill, and from proceeding by their agents, employés, or servants to take possession of said lots, and also from making sales of said lots or any of them until the further order of the court.

693 And the motion for a permanent injunction is set down for hearing at the United States court-room, at the city of Parkersburg, West Virginia, on Tuesday, the third day of March, 1891, at 10 o'clock a. m.

But this temporary restraining order is not to take effect until the complainant or some responsible person for him shall enter into bond, with approved security, in the penalty of one thousand (1,000.00) dollars before the clerk of this court, conditioned to satisfy and pay all damages that may accrue to the defendant by reason of the suing out of this injunction should the same be hereafter dissolved.

Service on the defendant of a copy of this order shall be deemed and taken as legal notice of the injunction herein granted.

JOHN B. LAIDLEY
vs.
S. A. REMLEY. } In Ejectment.

This day came William R. Thompson, the special commissioner appointed by this court to make a sale of certain lands specified in this proceeding, and tendered his report. There being no objection, the same is ordered to be filed.

And it appearing from said report that a rule has been issued out of the United States court against the said William R. Thompson for attempting to carry out the orders and decrees of this court, in which it is alleged that said Thompson is violating an order of injunction granted on the 28th day of February, 1891, by the circuit court of the United States, a copy of which order of injunction is filed with said commissioner's report; and it further appearing to the court that said commissioner is not enjoined from selling said land nor were his predecessors, C. W. Campbell and John H. Holt, special commissioners, in anywise enjoined from making sale of said land; and it being the opinion of this court that the Federal court has no rightful power or authority to enjoin or restrain the execution of the orders and processes of this court, the said William R. Thompson, special commissioner as aforesaid, is hereby di-

694 rected to proceed to sell said land on the day to which said sale is adjourned or on such other day, so that the same be sold during the present term of this court; and he is hereby directed and commanded to disregard said injunction or any rule issued thereon, but to make a report of his sale at some subsequent day of the present term of this court or else appear before this court to show cause why he should not be fined and imprisoned for failing to carry out the decrees and obey the order of this court.

And it appearing that said rule issued against said William R. Thompson, special commissioner, was procured upon the application of C. P. Huntington, special receiver, and through F. R. Enslow,

his attorney, with intent to hinder and interfere with the due execution of the decrees of this court, it is therefore ordered that a rule issue against the said C. P. Huntington and F. B. Enslow, returnable forthwith, to show cause why they and each of them should not be fined and imprisoned for attempting to hinder, delay, and prevent the execution of the orders and processes of this court, and a service of a copy of this order upon said Enslow and Huntington shall be deemed a sufficient service of the rule.

STATE OF WEST VIRGINIA, *Cabell County,* } *To wit:*

I, R. W. McWilliams, clerk of the circuit court of Cabell county, West Virginia, do certify that the foregoing is a true copy of the record and proceedings made and had up to this date in the action of ejectment of John B. Laidley against S. A. Remley, now pending in said court.

Given under my hand this 18th day of December, 1897.

R. W. McWILLIAMS,
Clerk C. C., C. C.

Answer of John B. Laidley.

(Filed Dec. 20, 1897.)

In the Circuit Court of the United States for the District of West Virginia.

695 C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia, Plaintiff,
vs.
JOHN B. LAIDLEY ET AL., Defendants. } In Equity.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA, Plaintiff,
vs.
JOHN B. LAIDLEY ET AL., Defendants.

To the honorable judges of the said court:

This respondent, for answer to a rule heretofore issued in the above-entitled causes and served upon respondent, would respectfully represent unto your honors:

That heretofore, to wit, on the 3rd day of November, 1883, he instituted in the circuit court of Cabell county, West Virginia, sixteen actions of ejectment for the recovery of the several lots set out and described in the petition of C. P. Huntington, special receiver, filed in the above entitled causes, and upon which the rule aforesaid issued; that said suits were regularly matured and trials thereof had and a judgment in each entered in favor of the plaintiff on the 10th day of September, 1890; and the plaintiff in said actions of

ejectment not being willing to pay the defendants for the improvements upon said lots, but electing to take a judgment for a sum ascertained by the jury to be the value of the said lots without the improvements, judgment was entered accordingly; and the defendants not having paid the said judgments against them in the said several actions of ejectment, afterwards, on the 15th day of December, 1890, the circuit court of Cabell county, West Virginia, by an order entered in each of said actions appointed C. W. Campbell and John H. Holt special commissioners to make sale of the several lots for the payment of the several judgments theretofore rendered against the. The said Campbell and Holt having failed to make such sale, on another day, to wit, on the 21st day of October, 1897, the said circuit court of Cabell county, West Virginia, by an order
696 entered in each of the actions aforesaid appointed William R. Thompson a special commissioner to execute and carry into effect the order of the 18th day of December, 1890, by making sale of the several lots; all of which will fully appear by a certified transcript of the record in each of said actions filed as part of this answer, marked "Exhibit A."

That in pursuance of the appointment of said Thompson as special commissioner, as aforesaid, he executed before the clerk of the circuit court of Cabell county, West Virginia, a bond in the penalty required by the order and with security ap-roved by the clerk.

Respondent would further show that the said Thompson, special commissioner, as aforesaid, proceeded to execute the requirements of the order of the circuit court of Cabell county, entered on the 21st day of October, 1897, and advertised said lots of land for sale in the "Huntington Advertiser," a paper published in Cabell county, and the date of the sale was set for the 16th day of December, 1897, but before said day arrived a rule and an application for an injunction to restrain said commissioner was sued out of this honorable court, returnable on the 20th day of December, 1897.

And respondent further shows that the said William R. Thompson is not his agent, nor his attorney, nor his representative in any sense, and that he is an office- of the court and appointed by the court, and that this respondent has no control over the actions of said William R. Thompson, special commissioner, whatever, and he can neither command him to go on with said sales nor forbid him from making said sales, but that he is acting entirely under the order and direction of the circuit court of Cabell county.

Your respondent would further say that said judgment upon which said orders of sale were based and made in the circuit court of Cabell county were made and rendered before any order of injunction whatever was applied for, issued, or served upon this respondent, and that the circuit court of Cabell county is a court of general jurisdiction, and had jurisdiction both of the parties and the subject-matter; that the plaintiff and all the defendants in said actions were citizens and residents of the county of Cabell at
697 the time of the institution of said suits, and are now citizens and residents of Cabell county, and the subject-matter, to wit, the lots of land sought to be sold and against which said judgment

was rendered, are situate in Cabell county, West Virginia; that under the laws of the State of West Virginia said judgment has become final, and still remains unappealed from and unreversed, and the time in which an appeal can be granted has long since elapsed, as under the laws of the State of West Virginia no appeal can be allowed from a final judgment of a circuit court unless it is taken within two years from the date of said judgment.

Your respondent further says that neither the Central Land Company nor C. P. Huntington, as a stockholder, as special receiver, or in any other capacity, were parties to said suits or had any interest whatever therein, except a remote liability upon the warranty of the Central Land Company of West Virginia, and that the said land company and the said C. P. Huntington, either as an individual or as special receiver, were not proper parties in said suits, as they had no interest in the subject-matter of the said suits which could have been adjudicated therein.

The respondent further says that he is advised, believes, and so charges that this honorable court has no power, authority, or jurisdiction whatever to restrain proceedings in the State court, either by injunction or otherwise; that any such power has been prohibited to this honorable court by section 720 of the Revised Statutes of the United States, and that all orders or decrees attempting to restrain either the parties to said suit or the officers of the court in carrying out the provisions of the orders of said court are absolutely null and void, and will be so treated by the honorable court when the matter is properly brought to its attention; and this respondent therefore pleads to the jurisdiction of this honorable court to enter, entertain, or grant any motion for an injunction that would restrain him or any officers of the circuit court of Cabell county from prosecuting his said actions of ejectment or the sales decreed thereon in and by the circuit court of Cabell county, West Virginia, or proceeding to execute the orders of sale.

698 Respondent further says that if this honorable court did enter, as alleged in the plaintiff's petition, an order of injunction enjoining him from proceeding to enforce certain judgments in ejectment recovered by him in said circuit court of Cabell county, West Virginia, that said injunction was issued long after the institution of said proceedings in the circuit court of Cabell county, West Virginia, and long after final judgment had been rendered therein, and that said order of injunction, so entered by this honorable court, is null and void and is not the subject-matter of violation or of contempt, and that your respondent is not liable to be proceeded against in said supposed orders of injunction for attempting to carry out the orders and decrees of the circuit court of Cabell county as aforesaid.

Your respondent further says that the circuit court of Cabell county, being a court of general jurisdiction and having jurisdiction over the parties in the subject-matter, undertook to decree and adjudicate the respective rights of the parties to said suit and did decree and adjudicate the rights of the parties to said suit and entered the final judgment therein in behalf of this respondent long

pri-r to the time when any proceeding was asked or taken by the plaintiff in this cause in this honorable court seeking to restrain or enjoin him from prosecuting his said suit in the circuit court of Cabell county; having obtained its jurisdiction over the said parties and subject-matter before this honorable court entertained the plaintiff's bill, it has now final and exclusive jurisdiction therein, and this honorable court has no authority, right, or power to restrain either the parties litigant or the officers of said court appointed by it from carrying into effect its orders and decrees.

Your respondent further says that he is a practicing attorney at the bar of this honorable court, and has always held himself ready and willing to obey any lawful order of this honorable court, and he here now disclaims any intent of violating or disregarding any of its lawful orders or decrees, either now or at any other time.

Your respondent, further answering, says that he is also a
699 practicing attorney in the circuit court of Cabell county, and has demeaned himself in said court as best he knew how, and that he likewise owes to that court implicit obedience to its orders and decrees.

Your respondent further says that as a litigant in the circuit court of Cabell county he has the right, by virtue of the laws of the State of West Virginia as well as the laws of the United States, to prosecute his said suits in said court without let or hindrance and without being the subject of an injunction or restraining order from any other court, either in the State of West Virginia or the United States.

Your respondent further says that he has sold and disposed of all of said sixteen judgments except five; that he has received the pay therefor, and that he has assigned said judgments to said purchasers, and that as to said judgments so sold and assigned by him he has no interest in them nor has he any control over the same whatever; that said sales were made—all except three—before the filing of the original bills in these causes and before either of these suits were instituted.

Your respondent further says that all the matters and allegations contained in the plaintiff's original and amended bills have been fully adjudicated and determined by the circuit court of Cabell county, W. Va., in the chancery cause of The Central Land Company *vs.* John B. Laidley *et als.*, in which said cause the same matters were in controversy as are now presented by the plaintiff's bills, the same facts relied upon, and the same issues presented between the same parties, affecting the same identical subject-matter, all of which were determined in favor of this respondent, all of which will more fully appear by a copy of the record in said causes filed herewith as "Exhibit B" and asked to be taken and considered as a part of this return.

This respondent further says that the title to all of said property mentioned in said bills, as well as the right to the possession thereof, has been determined and adjudicated to be in this respondent by the circuit court of Cabell county, W. Va., by its judgment

duly rendered therein, which judgment has been affirmed
700 by the supreme court of appeals of the State of West Virginia, as well as the Supreme Court of the United States, all of which will more fully appear by a copy of the record of an action of ejectment pending in said court, wherein this respondent is plaintiff and the said Central Land Company is defendant, lately determined by the Supreme Court of the United States on writ of error, a copy of the record thereof being filed herewith as part of this return and asked to be considered in connection herewith, together with the record of the chancery suit aforesaid in the State court. This respondent asks the court to read the answer filed by him to the original bill of C. P. Huntington, sp'l recv., filed against him in this court, and the plea and answer of this respondent, filed July 13, 1897, to the amended bill of said receiver in this cause, and the deposition of respondent filed last month in said cause as part of this answer; also the four following bills filed in this court: 1st, the bill of the stockholders of the Central Land Co., filed in this court in Dec., 1890, asking for a receiver and the proceedings therein yet pending in this court; also, 2nd, the bill of the Central Land Co. filed against respondent in this court in Dec., 1890, and the proceedings therein; also, 3rd, the bill of C. P. Huntington, special receiver, against this respondent *et als.*, filed in Feb., 1891, in this court, and the proceedings therein; and, 4th, the amended bill of said special receiver filed in this court in Dec., 1897, against this respondent and others and the proceedings therein, all of which records remains in this court and are parts of the record upon which the injunction in controversy have been granted.

Your respondent, having fully answered, prays that said rule may be dismissed, and that he may be dismissed from these proceedings with his costs.

JOHN B. LAIDLEY.

Subscribed and sworn to before me this 20th day of December, 1897.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

701 EXHIBIT A WITH ANSWER—LAIDLEY.

(Filed Dec. 20, 1897.)

(The above-mentioned exhibit is not now found among the record of my said office.—Clerk.)

EXHIBIT B WITH ANSWER—LAIDLEY.

(Filed Dec. 20, 1897.)

(The above-mentioned exhibit is not now found among the records of my said office.—Clerk.)

And at the same day, to wit, on the 20th day of December, 1897, the following order was made and entered of record, to wit:

CENTRAL LAND CO.
vs.
JOHN B. LAIDLEY ET AL. } In Chancery.

C. P. HUNTINGTON, Sp'l Rec'v'r,
vs.
JOHN B. LAIDLEY ET AL. } In Ch'y.

It is agreed by and between the att'ys for plaintiff and the defendants J. B. Laidley — that the sales advertised for December 16, 1897, and postponed to Dec. 23, 1897, of the lots sold by Central Land Co. to various purchasers be continued until after the actions of the circuit court of the United States on the motion for rule to show cause issued against John B. Laidley & Vinson & Thompson, which is set for January 20, 1898, and the hearing upon said rules to be had on said day, and upon the rule against F. B. Enslow, issued in the case of John B. Laidley *vs.* S. J. Love by the circuit court of Cabell county, Enslow is to file his answer to the rule, and the hearing of the questions on that rule is to be continued till after the action of the circuit court of the United States on the rule against Laidley and Vinson & Thompson.

F. B. ENSLOW,
For Plaintiffs.

Z. T. VINSON, *For Def'ts.*

702 And at the same day, to wit, on the 20th day of December, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, Special Receiver of the Central Land Company of West Virginia,
against
JOHN B. LAIDLEY and Others. } In Chancery.

This day came the plaintiff, by his attorneys, Simms & Enslow, and filed *their* petition asking the court to extend the time in which to take depositions in this case.

And the court, having maturely considered the petition, is of opinion that leave should be granted to the complainant for the reasons set out in said petition.

It is therefore ordered that the time in which the plaintiff is required to take testimony in this cause is extended so as to allow and permit the said testimony to be taken within ninety days after the hearing of this cause at the January term of this court, at Parkersburg, commencing January 10th, 1898.

Petition of C. P. Huntington, Sp'l Rec.

(Filed Dec. 20, 1897.)

In the Circuit Court of the United States for the District of West Virginia.

C. P. HUNTINGTON, Sp'l Rec., &co.,
vs.
JOHN B. LAIDLEY ET AL. } In Chancery.

The plaintiff says that in this cause the main questions for adjudication is as to the validity of John B. Laidley's title to the 240 acres of land known as lot No. 4 of the Frampton land, in the corporation of Huntington; that the cause as to John B. Laidley is not at issue, but that as to certain defendants who claims under conveyances from John B. Laidley made since the beginning of the original suits and during the pendency of this suit the cause is at issue; that, in order to fully determine the issue between the defendants
703 and vendees of Laidley, it is, in the opinion of the plaintiff, necessary to have the cause at i[ssue] as to John B. Laidley, who is the party most directly interest[ed] that the determination of Laidley's inter-sts will determine all question- raised by the answering defendant except as to one point; that the cause, as to the defendants claiming under Laidley, cannot, in the opinion of the counsel for the plaintiff, be fully determined until the cause is fully at issue as to all the defendants who claim under the Laidley title, as well as to Laidley himself.

That depositions in the cause will have to *ne* taken in California, Tennessee, Virginia, and New York as well as in West Virginia, and that until the issue between plaintiff and Laidley is fully made plaintiff cannot know just what facts must be proved; that up till the month of October, 1897, the defendant J. B. Laidley and all his vendees had been conducting their cause together, Laidley and the attorneys for all other defendants filing joint pleas; that at the October rules, 1897, the vendees of Laidley filed their answer, to which the plaintiff replied generally by replication; that the attorney for the plaintiff, who has been conducting the litigation for the plaintiff, F. B. Enslow, had undetstood from the attorney who up till October, 1897, represented Laidley, along with their other clients, that it was not desired to take testimony until the whol*d* cause was at issue, & that it was needless time and money wasted to take testimony until after the questions raised as to the validity of Laidley's pleadings was settled at the January term, 1897, at which time the exceptions to his plea and answer are to be argued and submitted. For this reason the plaintiff has not taken any testimony in support of his bill, and only learned within the last week that at the January term, 1897, the defendants, vendees of Laidley, were intending to urge a submission of the cause as to them independent of Laidley, & that Laidley did not intend to plead to an answer,

but would rely on his pleadings as filed and not answer farther. Having just learned this fact, plaintiff, who relied on the fact that issue as to all the defendants would have to be joined before the time for taking the testimony would begin to run and under equity rule 69, has not now time to take the testimony before the
704 expiration of 90 days from October rules, 1897, when the cause as to Laidley's vendees came to issue. Plaintiff further says that but for the fact that he was relying on the rule that requires the cause to be at issue as to all the defendants whose interests are similar, and from the fact that the attorneys who formerly represented Laidley had not ceased to represent him so far as the record shows, and *for* the fact that his attorney of record, F. B. Enslow, had understood that it was the intention or desire of the defendants other than Laidley to go to the expense and trouble of taking the testimony until the cause was at issue, he would have had such testimony taken before this time.

Plaintiff further states that he is informed that the cause cannot be finally heard and determined as to any of the defendants who claims under Laidley until the cause as to Laidley is also at issue. For these reasons he prays that the time in which he is required to take testimony may be extended for the period of ninety days from the date when the issue as to Laidley in his pleadings is finally made up.

Plaintiff further says that this motion for time is not for the purpose of delay, but to enable him to know exactly what issue he has to meet as well as to Laidley as to all parties claiming under him.

All of which is respectfully submitted.

C. P. HUNTINGTON, *Sp'l Rec'v'r*,
By F. B. ENSLOW.

UNITED STATES OF AMERICA, }
District of West Virginia. }

In the office of the clerk of the circuit court of said district.

I, F. B. Enslow, do solemnly swear that I am one of the attorneys for C. P. Huntington, sp'l receiver, and as such have charge of the litigations in the above cause, and that the facts set out in the foregoing petition are true, as I verily believe.

F. B. ENSLOW.

Taken, sworn to, and subscribed before me in my office this 20th day of December, 1897.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

705 And at another day, to wit, on the 25th day of June, 1898, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia, Complainant,
vs.
JOHN B. LAIDLEY ET ALS., Defendants.
} In Equity.

CENTRAL LAND COMPANY, Complainant,
vs.
JOHN B. LAIDLEY, Defendant.
} In Equity.

This the 25th day of June, 1898, these causes came on to be heard upon the rule for contempt issued against John B. Laidley, W. R. Thompson, and Z. T. Vinson and the answers and exhibits filed therewith of the defendants to said rule, and, being argued by counsel and upon consideration, the court finds that the circuit court of Cabell county, West Virginia, had taken jurisdiction of the parties and the subject-matter prior to the institution of the above-entitled suits, and that said cause is still pending in said State court, and that this court had no jurisdiction to grant the injunctions restraining the sale of the property under decrees of said State court. It is therefore adjudged, ordered, and decreed that said rule for contempt be, and the same is hereby, discharged without costs.

Bill of Complaint.

(Filed November 11th, 1890.)

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY.
} In Chancery.

706 The bill of complaint of the Central Land Company of West Virginia, filed in the circuit court of the United States for West Virginia against John B. Laidley, defendant.

Your petitioner, The Central Land Company of West Virginia, a corporation existing under and by virtue of the statutes of West Virginia, complaining, says that on the 18th day of August, 1865, Sarah H. G. Pennybacker, the wife of John M. Pennybacker, purchased of Rebecca J. Everett a tract of land lying in the county of Cabell and State of West Virginia, containing ten hundred and forty acres and known as lot No. 4, in the partition of the estate of Isaac Frampton, Jr., deceased, for the sum of $8,000. A copy of the deed from said Everett to said Sarah H. G. Pennybacker is filed herewith as "Exhibit A" and asked to be read as a part hereof; and on the 25th day of Feb'y, 1870, before any railroad had been completed from Richmond, Va., to the Ohio river, at the point where the city of Huntington now stands, and before any city had been built there, the said Sarah H. G. Pennybacker and her husband, for the sum of $11,000 cash in hand, sold said tract of land, excepting one acre, as set out in the deed hereinafter mentioned, to C. P. Huntington, and executed and delivered to him a good and sufficient deed under the laws as they then stood for said tract, a

copy of which deed is filed herewith, with the certificate thereon, as "Exhibit B," as a part of this bill. The said C. P. Huntington was given possession of said tract by the said Sarah so sold to him, and the said Huntington afterwards, on the 16th of October, 1871, for a valuable consideration, conveyed the same tract to your petitioner or complainant, who took possession of same, and at the same time, having purchased several other large tracts of the said Huntington contiguous and in the vicinity of said tract, it laid them all off in town lots, streets, avenues, and alleys and had the place incorporated under the laws of said State as the "city of Huntington," and it placed said lots on sale by its agents, and a large number of lots were sold in the years between 1871 and 1882, until in the year 1881 the said city had about four thousand people or in-
707 habitants. Some twenty-two persons had purchased lots of said company that were in said tract known as lot No. 4, and built homes and residences upon the same, and the Chesapeake & Ohio Railroad Company purchased of said land company two rights of way across said tract, one near the center of said tract and one on the Ohio River front, and built its railway across the same at both of the places mentioned. During the time said lots and pieces of land were being sold and the said purchasers were building houses and residences thereon and the said railway was being built upon said tract the said Sarah H. G. Pennybacker was living in said city, or in immediate vicinity, and had notice and knew that the parties were so buying and building upon said tract and believing themselves to be the owners in fee-simple of the lots so purchased.

In the winter of 1881, after the death of John M. Pennybacker, the husband of said Sarah, John B. Laidley, a practicing attorney in the courts of West Virginia, voluntarily went to said Sarah and told her, as she claims, that under the new constitution of West Virginia she had dower in the tract of land she had sold to C. P. Huntington, and that if she would let him bring a suit he would recover it for her and they would divide equally what was recovered. At the time he approached her and told her that she had an interest still in the land he made her promise him, on the "honor of a lady," that she would not consult any other lawyer about the matter. She then and there told said Laidley that she had sold the said tract of land to the said Huntington and had received the pay for it, and she could not understand how she had any further interest of any kind in the land. She refused to allow the said Laidley to bring any suit in her name to recover dower or any other interest. After repeated efforts to have her bring suit and failing, and still insisting that she had a dower, he offered to give her $500 if she would deed the land to him. The said Sarah had no business experience, having before that time relied entirely upon her husband, who was then dead, and being obligated by the said Laidley not to consult any lawyer, and without consulting any lawyer as to the effect of her acts, on the 26th day of January, 1882, she executed and delivered to
708 said Laidley a deed for said tract for the sum of $500, $100 of which he paid in cash, and gave his notes for the balance,

payable in one and two years. Soon after procuring said deed, and early in March, 1882, he brought an action against your complainant in the circuit court of Cabell county, West Virginia, to eject it from said tract, which action was finally tried in said circuit court of Cabell county on the 22nd day of December, 1884, and resulted in a judgment in favor of your complainant, the defendant therein. On the 23rd of October, 1886, the supreme court of appeals of said State granted said Laidley a writ of error to said judgment. A copy of the printed record in said writ of error in said appellate court is filed herewith as Exhibit "D" and asked to be read as a part hereof. On the 26th day of November, 1887, the said court of appeals reversed the said judgment of the said circuit court and sent the case back to the said circuit court for a new trial. A copy of the judgment of the said court of appeals and the written opinion therein *are* made a part hereof as Exhibit "E" and asked to be read as a part hereof. And afterwards, at a circuit court of Cabell county, held on the 12th day of September, 1890, there was a trial had of the said ejectment suit before a jury, and a verdict therein in favor of the plaintiff J. B. Laidley, and a judgment therein in his favor for the possession of the said tract of land so sued for, which said judgment of the circuit court was made in pursuance of the said judgment of the supreme court of appeals so rendered on the 26th day of November, 1887, as will appear from a duly certified copy of the record from the circuit court of Cabell county, West Virginia, filed herewith, marked Exhibit "F," and prayed to be read as part of this bill.

The complainant now alleges and avers that at the time C. P. Huntington purchased the said tract of two hundred and forty acres of land in controversy between this complainant and John B. Laidley, and at the time this complainant purchased the said land from the said C. P. Huntington, as the law of the State of West Virginia
709 then was, as construed, laid down, and expounded by the supreme court of the State of Virginia, made before the formation of West Virginia from part of Virginia, which was then the law of West Virginia, and by the supreme court of West Virginia, the said deed from Sarah H. G. Pennybacker and John M. Pennybacker as then executed and delivered was and is a valid contract, and passed to said C. P. Huntington a valid title to said land, and, as the law of the State of West Virginia thus was, the said deed and possession taken thereunder vested rights in said C. P. Huntington that could not be legal-y divested by an- subsequent decision of the said supreme court of West Virginia changing by judicial decision the law of the said State so as to impair the obligation of the contract and rendering null said deed. Complainant further alleges and charges that the decision of the supr-me court of appeals of West Virginia rendered November 26th, 1887, reversing and setting aside the said judgment in the action of ejectment and remanding the case to the circuit court for trial, and the judgment rendered therein on the 12th day of September, 1890, in pursuance thereof, were and are in violation of the Constitution of the United States, which forbids the passing of any law impair-

ing the obligation of contracts, and that the said decisions are, by reason of being an entirely different construction of the law now from what it was at the time the deed was made, an impairment of a contract, and that they do and the holding and ruling of the courts of the State of West Virginia does impair, set aside, and totally defeat the obligation of the contract made by and between Sarah H. G. Pennybacker and John M. Pennybacker and C. P. Huntington, and affect, impair, set aside, and vacate the contract entered into by and between complainant and the said C. P. Huntington by which he conveyed to complainant the land in question; that being a valid contract when entered into, it could not by a subsequent decision of the supreme court be vacated and the rights vested thereby be annulled, and the entire contract under which the title to this complainant to the entire tract of 240 acres of land vested be impaired and the obligations of the contract annulled.

710 Complainant also says, alleges, and charges that the constitution of the State of West Virginia, as adopted in convention assembled by the representation of the people and in force at the time the conveyance to C. P. Huntington was made and when he took possession of the land in controversy in this suit and when this complainant bought, had conveyed to it, and took possession thereof, provided that the laws of the State of Virginia in force then within the boundaries of West Virginia and not repugnant to the said constitution should continue as the laws of West Virginia until altered or repealed by the legislature; that the said deed was thus, under the law of Virginia, as it thus was, a valid deed and contract, and, being so, cannot be invalidated by a subsequent decision of the supreme court of West Virginia.

This complainant further says, alleges, and charges that at the time the said J. B. Laidley bought the pretended title and right that the said Mrs. Sarah H. G. Pennybacker had in said tract of land and took a deed therefor, dated January 26th, 1882, he knew that this complainant was in actual possession of the land in controversy, and that its actual value was at least $75,000.00; that this complainant, with the land in actual possession, was claiming the fee-simple title to the said land, and that the said Mrs. Sarah H. G. Pennybacker was not then making, did not make, and actually renounced and disclaimed all intention of making or setting up any claim to the land which she had already sold and been paid for and had conveyed to C. P. Huntington, as aforesaid. The complainant also alleges that the defendant had full knowledge of the fact that if the said Sarah H. G. Pennybacker's deed to the said C. P. Huntington was in fact void—that if she did not for ten years after her husband's death set up and enforce her claim—that this complainant, holding the land in actual possession and claiming it in fee-simple, under and by virtue of the deed from C. P. Huntington, would by the said failure to claim be, by the lapse of said ten years, *be* actually vested with an indefeasible title to the land by occupa-

tion and limitation or lapse of time; that knowing the facts
711 and knowing that the said Mrs. Sarah H. G. Pennybacker would not assert her title, if any she had, to this land, and would, by allowing the lapse of time to bar her claim, thus vest complainant with a perfect title, the said J. B. Laidley, defendant, intending to deprive this complainant of its property and to defraud it out of the land which it had bought and paid for, as aforesaid, after said Mrs. Pennybacker had refused to set up, litigate, or seek to enforce any claim against this complainant by representing to her that she had only a dower interest which was vested in her by virtue of some supposed change of the law wrought by the "new constitution," as he termed it, prevailed on her to sell him her interest for $500.00.

The plaintiff now alleges that the deed of January, 1882, to the said J. B. Laidley was in fact procured by fraudulent statements and misrepresentations, and that Mrs. Sarah H. G. Pennybacker, when she executed it, intended only to convey to said Laidley such interest as he represented to her she had in said tract of land, and not the fee, which she had, as she stated to defendant at the time, already sold complainant.

Complainant further says that all the acts and doings of the said John B. Laidley immediately leading up to the purchase of the land from Mrs. Pennybacker in January, 1882, were one and all devised, planned, and executed by the said Laidley with the intent on his part to defraud this your complainant and divest it of its property and of the possession thereof; that, in pursuance of that intention, the said Laidley, acting under the decision of the circuit court of Cabell county made in the action of ejectment, is now about to sue out a writ of possession of and for the said tract of 240 acres of land (except the one acre reserved as aforesaid), and will, if not restrained by your honor's court, have the possession delivered to him under said writ on the 12th day of November, 1890, and thereby forever deprive your complainant of any right to the said land, and will irreparably injure your complainant; and your complainant has not time between now and the morning of November 12th, 1890, to give notice of its application for an injunction, and, if notice is required, possession, under the writ, will be delivered
712 before application will be or can be heard.

Forasmuch as your complainant is without remedy in the premises, except in a court of equity, where matters of this kind are alone and properly cognizable, it therefore prays that the said John B. Laidley may be made a party defendant to this suit and be required to answer this bill on oath, and that to that end all necessary writs, orders, and process may issue.

And it further prays that the said John B. Laidley and all others claiming by, through, or under the said Laidley as purchasers or otherwise of said tract of land may be enjoined, restrained, and inhibited from suing out of the office of the circuit clerk of Cabell county any writ of possession, and that the said John B. Laidley and all others claiming title to the said land by or through him may be restrained, enjoined, and inhibited from in any manner taking pos-

session of or in any manner interfering with the said land or with complainant's possession thereof.

And it also prays that the said deed executed by Sarah H. G. Pennybacker to John B. Laidley, dated the said 26th day of January, 1882, may be set aside, vacated, and annulled, and that the said John B. Laidley, his agents, servants, attorneys, and all others who claim by, through, or under him may be perpetually enjoined from carrying into effect the judgment of the court in said ejectment suit and from interfering with your complainant's possession of said land.

And the further prayer of the complainant is that the said John B. Laidley and those claiming under him be inhibited and enjoined from setting up any title to said land or proceeding to enforce the same against your complainant, for the reason that such proceeding and claim would impair the obligations of the contract under which the complainant holds said land and would render null and void the laws, rules of decision, and adjudications of the highest court of the State, as well as the State of Virginia, which were in force at the time said contract and deed was made under which this complainant claims title.

And complainant further prays that all such other, further, and general relief be granted it as the case may require and to
713 equity seems fit; and this your complainant, as in duty bound, will ever pray, &c.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA,
By COUNSEL.

JACKSON & YEATON,
SIMMS & ENSLOW, *Sols.*

STATE OF WEST VIRGINIA, }
County of Kanawha, } *ss:*

This day personally appeared before me, the undersigned, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, H. C. Simms, who, being duly sworn, says that he is an attorney for the Central Land Company of West Virginia, and that he is personally acquainted with the facts set out in the foregoing, and that where they are stated therein as on the knowledge of the complainant are true, and that where stated on information he believes them to be true.

H. C. SIMMS.

Taken, sworn to, and subscribed before me, in my county, this 11th day of November, 1890.

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

714 EXHIBIT A.

Know all men by these presents, that I, Rebecca J. Everett, of the county of Lawrence and State of Ohio, for and in consideration of eight thousand dollars, to me in hand paid by Mrs. Sarah H. G. Pennybacker, of Wood county, W. Va., have bargained and sold, and by these presents grant, bargain, sell — convey, unto the said S. H. G. Pennybacker, the following-described real estate, situate in Cabell county, W. Va., to wit: Being lot No. 4 in the division of a tract of land inherited from Isaac Frampton, Jr., by Ephraim M. Frampton, David Frampton, Hiram Frampton and the said Rebecca J. Everett, and by and in accordance of decrees of the circuit court of Cabell county, Va., dated respectively Nov., 1862, and March, 1863, John Laidley, a special commissioner, appointed for the purpose of deeding said tract, did accordingly deed to the said R. J. Everett the following-described tract which is now by her deeded to the said Sarah H. G. Pennybacker, to wit: Beginning at a stake, corner of lot No. 3 on the Ohio river, S., 19¼ E., 377 poles to a stake; from which a small sycamore stands S., 1½ E., two poles and three links; N., 70¾ E., 1 pole and 24 links to a stake; from which the above sycamore stands N., 33 W., 3 poles and 7 links, and another stands, 52½ E., 3 poles and six links; thence S., 13 E., 120 poles to two white oaks; S., 30 W., 36 poles to a white oak among some rocks on a point; S., 70 W., 50 poles to a black oak and a white oak on a point; S., 11½ W., 120 poles to two white oaks on a hill; S., 54 E., 62 poles to two black oaks; N., 40 E., 150 poles to a chestnut oak near the top of a ridge; N., 5 W., 180 poles to a white oak and two beeches; N., 21 W., 8 poles to the S. E. corner of the Brown tract; thence N., 19 W., 398 poles to a stake on Ohio river; S., 73 W., 47 poles and 14 links to the place of beginning, containing 240 acres, more or less; to have and to hold

715 the premises aforesaid unto the *the* said Sarah H. G. Pennybacker, her heirs and assigns forever. And the said Rebecca J. Everett, for herself, her heirs and assigns, covenants with the said Sarah H. G. Pennybacker that she is lawfully seized of the premises aforesaid; that the premises and appurtenances are free and clear from all incumbrance; and that she will forever warrant and defend the same to the said Pennybacker, her heirs and assigns, against the lawful claims of all persons whomsoever.

In witness whereof, I have hereunto set my hand and seal this 18th day of August, A. D. one thousand eight hundred and sixty-five.

R. J. EVERETT. [SEAL.]

In presence of—

JAMES A. BARTRAM.
JENNIE RANIE.

[Revenue stamp, $8.00.]

STATE OF OHIO, *Lawrence County,* } *ss:*

Before me, the undersigned authority in and for said county, personally came the above-named Rebecca J. Everett and acknowledged the signing and sealing of the foregoing conveyance to be her voluntary act and deed, this 18th day of August, 1865.

[Notarial Seal, Lawrence County, Ohio.]

JAMES A. BARTRAM,
Notary Public, Lawrence County, Ohio.

RECORDER'S OFFICE, *Cabell County, West Virginia,* } *ss:*

This deed, from Rebecca J. Everett to S. H. G. Pennybacker, was this day presented to me, the recorder of the county and State aforesaid, together with the certificate of acknowledgment thereon endorsed. The same is admitted to record.

Given under my hand this 7th day of Feb'y, 1866.

THOS. J. F. HAYSLIP, *Dept.*,
For THOS. J. HAYSLIP, *Recorder.*

716 EXHIBIT B.

Know all men by these presents: That we, John M. Pennybacker and Sarah H. G. Pennybacker, of the county of Cabell and State of West Virginia, parties of the first part, and C. P. Huntington, of the city, county and State of New York, of the second part, witnesseth:

That the parties of the first part, in consideration of eleven thousand dollars, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey to the said C. P. Huntington, his heirs and assigns forever, all that certain tract or parcel of land situate, lying and being in the county of Cabell and State of West Virginia, on the Ohio river, about three miles below the mouth of the Guyandotte river, and bounded as follows, to wit: "Beginning at a stake, corner of lot No. 3 in the division of the lands of Isaac Frampton, on the Ohio river, S., 19¼° E., 377 poles to a stake; from which a small sycamore stands S., 1½ east, two poles and three links; N., 70¾ east, one pole and 24 links to a stake; from which the above sycamore bears N., 33° W., three poles and 7 links, and another bears 32½ E. 3 poles and 6 links; thence S., 13° E., 120 poles to two white oaks; S., 30 W., 36 poles to a white oak among some rocks on a point; S., 70 W., 50 poles to a black oak and a white oak on a point; S., 11½ W., 120 poles to two white oaks on a hill; S., 54 E., 62 poles to two black oaks; N., 40° E., 150 poles to a chestnut oak near the top of a ridge; N., 5 W., 180 poles to a white oak and two beeches; N., 21 W., 8 poles to the S. E. corner of the Brown tract; thence N., 19 W., 398 poles to a stake on Ohio river; S., 73 W., 47 poles and 14 links to the place of beginning; containing 240 acres, more or less; subject, however, to a reservation of one acre of land at the corner of the field where the lane and the turnpike road intersect

and whereon a grocery storehouse stands. Beginning at a stake on the side of the turnpike road and the west side of Beuhring's lane on my line, thence, with the turnpike, two hundred and ten
717 feet to a stake; thence S., 19 E., 210 feet to a stake; thence east and parallel with turnpike, 210 feet to a stake in my line; thence with said line N., 19° W., 210 feet to the beginning. The title of which land is hereby retained and reserved to S. H. G. Pennybacker, as if this deed was never made. Also, the right to occupy the land for the present year, work the same and apply the crop for his own use; but to allow said Huntington to work on the same for any purpose in building and completing the Chesapeake and Ohio r'road and its appurtenances. And all the estate, title and interest of the said John M. Pennybacker and Sarah H. G. Pennybacker either in law or equity of, in and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof, to have and to hold the same to the only proper use of the said C. P. Huntington, his heirs and assigns forever. And the said John M. Pennybacker and Sarah H. G. Pennybacker, for themselves and for their heirs, executors and administrators, do hereby covenant with the said C. P. Huntington, his heirs and assigns that they are the true and lawful owners of the said premises, and have full power to convey the same; that the title so conveyed is clear, free and unencumbered; and further, that they will generally warrant and defend the same against all claim or claims of all persons whomsoever.

In witness whereof, the said John M. Pennybacker and Sarah H. G. Pennybacker have hereunto set their hands and seals this 25th day of February, in the year of our Lord one thousand eight hundred and seventy.

JOHN M. PENNYBACKER. [SEAL.]
S. H. PENNYBACKER. [SEAL.]

Signed, executed and acknowledged in presence of us.

——— ———.
——— ———.

[U. S. revenue stamp, eleven dollars ($11.00).]

718 GUYANDOTTE TOWNSHIP, } *ss:*
The State of West Virginia, County of Cabell, }

Be it remembered that on the 25th day of February, in the year of our Lord one thousand eight hundred and seventy, before me personally came John M. Pennybacker, party and granter in the foregoing deed, and acknowledged the signing thereof to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my seal on the day and year aforesaid.

THOS. J. HAYSLIP, *Recorder.* [SEAL.]

STATE OF WEST VIRGINIA, }
County of Cabell. }

Personally came before me, the undersigned, recorder of the county and State aforesaid, Sarah H. G. Pennybacker, wife of the above-mentioned John Pennybacker and party to the foregoing deed, and, being examined by me privily, and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Sarah H. G. Pennybacker, acknowledged that she had willingly signed, sealed and delivered the same and wished not to retract it.

Given under my hand and seal this 25th day of February, 1870.

THO. J. HAYSLIP, *Recorder.* [SEAL.]

RECORDER'S OFFICE, }
Cabell County, West Virginia, } *ss:*

This deed, from J. M. Pennybacker and wife to C. P. Huntington, was this day presented to me, the recorder of the county and State as aforesaid, together with the certificates of acknowledgment thereon endorsed. The same is admitted to record.

Given under my hand this 31st day of March, 1870.

THO. J. HAYSLIP, *Recorder,*
By THOS. J. F. HAYSLIP, *Dept.*

719 EXHIBIT C.

This deed, made the sixteenth day of October, in *in* the year one thousand eight hundred and seventy-one, between Collis P. Huntington, of the city, county and State of New York, and Elizabeth S., his wife, parties of the first part, and the Central Land Company of West Virginia, a corporation created by and under the laws of the State of West Virginia, party of the second part, witnesseth,

That in consideration of the sum of six hundred thousand dollars, the said parties of the first part do grant unto the said part- of the second part all those certain tracts, pieces or parcels of land situate, lying and being in the county of Cabell and State of West Virginia.

First. All that certain piece or parcel of land bounded and described as follows, to wit: Beginning at a stake on the bank of the Ohio river, 68 poles above Wm. H. Hagan's upper corner; thence S., 15½ W., 224 poles to a pile of stone on the railroad; thence with the railroad N., 77 E., 39 poles and 5 links to a stake; then leaving the R. road S., 7 E., 274 poles to a white oak; S., 3 E., 278 poles to a stake on the military line, and with it N., 89 E., to Mrs. Rickett's line, and with it N. 3, east, to John Everett's land, and with his line N. 3, east, to the first run on the right-hand side of the Guyandotte river and with the meanders of said run to the Guyandotte river; thence down the west bank of said river, including its banks and shores to the Ohio river; thence down the Ohio river, including its banks, shores and water privileges, to the beginning, containing four hundred and thirty-four acres, more or less; being the same premises which were conveyed to said C. P. Huntington by James H. Buffington and Columbia L., his wife, by deed dated February 14, 1870,

recorded in the recorder's office of said Cabell county, March 22d, 1870, in Deed Book B, page 408.

720 Second. All that certain piece or parcel of land lying and being on the Ohio river, and bounded and described as follows, to wit: Beginning at a stake on the bank of said river, upper corner to the land claimed by the heirs of John Laidley, dec'd; thence with the upper line of said Laidley's land to a line of a tract of land now owned by P. C. Buffington; thence with the north line of the same to a white oak and dogwood, corner to the Hagan tract; thence with the lower line of the same to a stake on the bank of said river; thence down said river and binding thereon to the beginning, containing two hundred and fifty-eight acres, be the same more or less, being the same premises which were conveyed to the said C. P. Huntington by John N. Buffington of said Cabell county, by deed dated the 23rd day of July, 1870, recorded in the recorder's office of said county of Cabell, July 27, 1870, in Deed Book B, folio 508.

Third. All that certain tract of land situate in said Cabell county, West Virginia, containing four — and fifty-six acres, more or less, and described generally as follows: Beginning at a stake on the Ohio river corner formerly of John N. Buffington and John Laidley, now, or late of C. P. Huntington and Albert Laidley; thence southerly, and with the line late of said Huntington, to the corner late of said Huntington, Laidley and P. C. Buffington; thence westerly with the southern line of said Laidley's tract to the line of the tract formerly owned by William H. Buffington; thence southerly and westerly with the boundary line of said tract to the line of the tract formerly owned by Wm. Paine; thence with the boundary line to the line of P. C. Buffington; thence northerly with the line of said Buffington to the Ohio river; thence easterly and with said river to the beginning—being the same premises which were conveyed to the said C. P. Huntington by Albert Laidley and Vesta, his wife, by deed dated October 20th, 1870, recorded in the recorder's office of said county of Cabell on the 22d day of October,

721 1870, in Deed Book C, folio 2, subject to the reservation and exceptions contained in said deed.

Fourth. All those certain tracts or parcels of land situate in said county which in a certain deed executed by Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated April 13th, 1870, recorded in the recorder's office of said county, April 16th, 1870, in Deed Book B, 445, *an* bounded and described as follows, to wit: One tract containing two hundred and ninety-nine acres, bounded and described as follows: Beginning at a stake, northeast corner of S. W. Johnston's land, and running with the upper line thereof, S., 20¾° E., 308 p. to a stake; thence N., 80° W., 3 poles and 18 links to a stone; thence S., 75° W., 115 p. to a stone near a sycamore tree, southwest corner of S. W. Johnston's land; thence S., 21° E., 112 po. to a stake in Watson's line at a dogwood; thence with said Watson's line S., 68 W., 60 po. to the dogwood corner; thence S., 21° W., 36 po. to two white oaks, beeches and sugar tree; S., 10° W., 114 p. to three wht. oaks on a ridge; S., 65 E., 48 poles to two

white oaks, N., 48° E., 46 poles to white oak and locust stump; N., 49 E., 160 po. to a black oak and chestnut oak; S., 88 W., 110 p. to a stake from which a black walnut —, N., 21½ E., 2 p. and 7 links, and an apple tree S., 29½ W., 4 po., stands; north, 29 E., 186 p. to a chestnut oak on a hillside, N., 33 E., 61 po. to two double willows; N., 20 W., 186 po. to a stone; S., 70 W., 25 poles, 15 links to a stone, N., 20° W., 121 po. to a stake on the Ohio river; S., 70 W. 53 p. and 16 links to the beginning; it being the same which was conveyed to me on the 22d day of March, 1870, by deed of Jno. L. Johnston and Mary Jane, his wife, and Wm. L. Johnston and Susan, his wife, by deed recorded in Deed Book B, page 422, of Cabell county.

One tract containing one hundred and ten acres, situate in Cabell county and bounded on the southeast by F. D. Beuhring, on the east by E. M. Frampton, and on the north by the lands formerly of Wm. L. and J. L. Johnston and hereinbefore described, and
722 parcel of a certain tract of 800 acres of the said Laidley, fully described in a deed of O. A. and E. McGinnis, recorded in Deed Book J, page 441, of Cabell county, which is to be laid off by the party of the second part, or under his directions, by lines which shall not cross the Porterfield ridge; and the meets, bounds and abuttals so established shall be regarded as the meets, bounds and abuttals intended by this conveyance, but not including one and one-half acres sold to Sam'l Allen by said Laidley; and also his entire interest in a tract of land containing 240 acres, purchased of J. M. Pennybacker and wife, by said Laidley; and conveyed by his directions to C. P. Huntington, the title to which said Laidley covenants to warrant and defend generally.

Fifth. All those three certain tracts or parcels of land situate in said county, which in a certain deed executed by the said Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated July 25th, 1870, recorded in the recorder's office of said county, July 25, 1870, in Deed Book "B," folio 505, are bounded and described as follows, to wit: One containing seven hundred acres, known as the Everett farm, and bounded on the north by the Ohio river, on the west by the lands of C. P. Huntington, on the east by the lands of J. M. Hanley, on the south by the lands of F. D. K. Beuhring and others, the said tract being fully described in a deed from F. B. Kline, special com'r, to Albert Laidley, recorded in Deed Book B, folio 499, Cabell county, W. Va.

One other tract containing two hundred and forty-two acres, known as the Ephraim Frampton farm, and described as follows: Bounded on the north by the Ohio river, on the east by the lands of C. P. Huntington, on the west by the lands of A. Laidley, and on the south by the lands of A. Laidley, and fully described in a deed of E. M. Frampton and wife to A. Laidley, recorded in Deed Book B, folio 500, Cabell county, W. Va.; excepting from the quantities in said deed a lot of one acre of land conveyed by A. Laidley
723 to Nancy M. Frampton by deed describing the same and recorded in Deed Book B, folio 501, Cabell county.

And one tract containing two hundred and seven acres, and known

as the Dr. McCullough land, and described as follows: Bounded on the north by the Ohio river, on the east by the lands of A. Laidley (and herein conveyed); on the west by the lands of C. P. Huntington; on the south by Laidley and Huntington; the same being fully described in a deed by T. B. Kline, special com'r, and P. H. McCullough and wife to A. Laidley, excepting two lots of fifty feet in width by one hundred feet in length, recorded in said deed. The said several tracts making in the aggregate eleven hundred and forty-nine acres, of which is excepted and reserved from this grant the lot of one acre above referred to; also, the two lots of five thousand feet each, above referred to; also, a lot of six acres conveyed by A. Laidley and wife to F. D. K. Beuhring by deed recorded in Deed Book B, folio 503, Cabell county, W. Va.

Sixth. All those two certain tracts or parcels of land situate in said county, which in a certain deed executed by said Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated October 20th, 1870, recorded in the recorder's office of said county, October 22, 1870, in Deed Book C, folio 1, and bounded and described as follows, to wit:

One tract beginning at a stake on the Ohio river, corner of C. P. Huntington and Albert Laidley, formerly of C. Everett and John M. Hanly; thence southerly and with the line of C. P. Huntington to the southwestern corner of said J. M. Hanly tract; thence easterly and northerly with the boundary lines of said tract to the Ohio river; thence westerly and with the Ohio river to the beginning, the said tract containing three hundred acres, more or less.

The other tract, also situate in said county, adjoining the above-described tract, being bounded and described as follows, to wit:

Commencing at a stake on the Ohio river in the line of P. C.
724 Buffington and Albert Laidley, formerly William P. Holderby; thence S., 5½ E., 1,173 feet to the corner of the Marshall College lot, S., 47¾ W., 564 ft. to a stake; S., 50° 10′ W., 875½ feet to the northwestern corner of said college lot; S., 50° 10′ W.. 1,343½ — to a stake on the line formerly of J. H. Poage; thence with the line of said Poage S., 17¼ E., 1,355 ft. to a stake fifty feet south of the center line of the Chesapeake and Ohio r'road as at present located; thence parallel with said center line of said road S., 77° 15′ W., 1,103 ft. to a stake on the line of the tract of land formerly owned by John M. Hanly; thence northerly with the line of said Hanly to the Ohio river; thence easterly with the river to the beginning, containing two hundred and four acres, more or less, saving and reserving from that part of this tract, formerly owned by Wm. P. Holderby, a lot containing four acres and certain rights of way fully described in his deed to Albert Laidley, of record in Cabell county, as a reservation, and also from that part of the tract formerly owned by Jas. H. Poage, four acres, described in the reservation made in his deed to Albert Laidley, also of record in Cabell county.

Seventh. All that certain tract of land which in a certain deed executed by John M. Pennybacker and Sarah, his wife, to said C. P. Huntington, dated February 25th, 1870, recorded in the recorder's

office of said county, March 31st, 1870, in Deed Book B, pages 427 and 428, is bounded and described as follows, to wit:

All that certain tract or parcel of land situate, lying and being in the county of Cabell and State of West Virginia, on the Ohio river, about three miles below the mouth of the Guyandotte river, and bounded as follows, to wit: Beginning at a stake, corner of lot No. 3, in the division of the lands of Isaac Frampton, Jr., on the Ohio river, south, 19¼ east, 377 poles to a stake; from which a small sycamore stands, S., 1½ east, two poles and three links; N., 70¾ east, one pole and 24 links to a stake; from which the above sycamore bears, N., 33° W., three poles and 7 links, and another bears
725 32½ E., 3 poles and 6 links; thence south 13° E., one hundred and twenty poles to two white oaks; S., 30° W., thirty-six po. to a white oak among some rocks on a point, S. 70° W., 50 poles to a black oak and white oak on a point, S., 11½ W., 120 poles to two white oaks on a hill; S., 54° E., 62 poles to two black oaks; N., 40° E., 150 poles to a chestnut oak near top of ridge; N., 5° W., 180 poles to a white oak and two beeches; N., 21° W., 8 poles to the S. E. corner of the Brown tract; thence N., 19° W., 398 poles to a stake on the Ohio river; S., 73 W., 47 poles and 14 links to the beginning—containing 240 acres, be the same more or less; subject, however, to a reservation of one acre of land at the corner of the field where the lane and the turnpike intersect, and whereon a grocery storehouse now stands. Beginning at a stake on the side of the turnpike road and the west side of Beuhring's lane, on my line; thence with the turnpike two hundred and ten feet, to a stake; thence S., 19 E., 210 feet to a stake; thence east and parallel with turnpike 210 feet to a stake in my line; thence with said line N., 19 W., 210 feet to the beginning. The title of which land is hereby retained and reserved to said S. H. G. Pennybacker as if this deed was never made." Also, the right to occupy the land for the present year, work the same and apply the crops for his own use, but to allow said Huntington to work on the same for any purpose in building and completing the Chesapeake & Ohio r'road and its appurtenances, being the same 240 acres above referred to in the closing paragraph of the fourth description.

Eighth. All that certain tract of land situate in the county of Cabell and State aforesaid, which, in a certain deed, executed by said Albert Laidley and Vesta, his wife, to said C. P. Huntington, dated December 7, 1870, recorded in the recorder's office December 7th, 1870, in Deed Book C, folio 39, is bounded and described as follows, to wit:

All of that tract of land s'd Albert Laidley bought of Wm. P. Holderby, and deeded on the 7th day of October, 1870, and
726 recorded in Deed Book B, page 554, in Cabell county, West Virginia, which was not heretofore deeded by said Laidley to said Huntington, and described as follows: On the east by Wm. P. Holderby; on the south by the C. & O. railroad, as at present located; on the west by lands of s'd Huntington, formerly Poage; on the north by said Huntington, formerly Wm. P. Holderby; containing forty acres, more or less.

Ninth. All that certain lot, piece or parcel of land which, in a certain deed executed by William P. Holderby to said C. P. Huntington, dated March 1st, 1871, recorded in said recorder's office, March 6, 1871, in Deed Book C, page 103, is bounded and described as follows, to wit:

A lot of land situate near the Ohio river, in Cabell county, West Virginia, and containing four acres of land, and including the brick dwelling-house and other buildings of the said party of the first part; the same — the exact parcel that was reserved in a previous grant of about one hundred and twenty-four acres, made to Albert Laidley, and described therein as a reservation of four acres, with all the privileges and appurtenances thereof.

Tenth. All that certain tract of land which, in a certain deed executed by Elisha T. Mitchell and Elizabeth M., his wife, to said C. P. Huntington, dated April 21st, 1871, recorded in the recorder's office of said county on the 21st day of April, 1871, in Deed Book C, page 133, is bounded and described as follows, to wit: "All that certain piece or parcel of land situate in Cabell county, West Virginia, purchased by the party of the first part from Dr. P. H. McCullough and deed for same executed by T. B. Kline, special commissioner, and bounded as follows: On the north by the Ohio river, on the east, south and west by lands of C. P. Huntington, containing four acres of land, be the same more or less."

Eleventh. All that certain tract of land which, in a certain deed executed by William P. Holderby to said C. P. Huntington, dated July 19, 1871, recorded in the recorder's office of said county,
727 on the 20th day of July, 1871, in Deed Book C, page 173, is bounded and described as follows, to wit: A certain tract or parcel of land, situate, lying and being in the county of Cabell, State of West Virginia, containing twenty-eight and one-half (28½) acres, more or less, and bounded and described as follows: On the easterly side by the lands of Peter C. Buffington and the said C. P. Huntington, on the northerly side by the lands of the State normal school, on the westerly side by the lands of the said C. P. Huntington, and on the southerly side by the lands of the Chesapeake and Ohio Railroad Company, with all and singular the privileges and appurtenances thereunto belonging, together with all rights of reversion, whether the public roads or otherwise, thereof, reserving, nevertheless, from this grant two parcels of land, one containing one and ninety-two one-hundredths (1.92) acres, described as follows in a deed to C. F. Parsons, and now of record in the county of Cabell, to wit: Beginning at a stone in the east line of the lane running from the college to the State road, and in the centre of Sixth avenue, in the city of Huntington; thence east with the centre of Sixth avenue to a stake in the centre of 17th street, and thence south with the centre of said street and with the east line of said lane so as to include one and ninety-two-hundredths (1.92) acres, by a parallel line with the centre of said Sixth avenue; the other containing one acre, is situated in the southwest corner of the tract herein conveyed, and is bounded and described as follows, to wit: Beginning at a point thirty feet northerly of the northerly line

of the land of the Chesapeake and Ohio Railroad Company, and in the easterly line of the lane running from the college to the State road; running thence N., 14° W., 210 feet to the southerly line of 7th avenue in the city or town of Huntington; thence, along this line, N., 76° E., 207.43 feet to a stake twenty feet east of the westerly line of 17th street; thence parallel with the said line of 17th street S., 14° E. 210 feet to a stake thirty feet northerly of the northerly line of the land of the Chesapeake and Ohio Railroad
728 Company; thence parallel with the line of said railroad company S., 76° W., 207.43 feet to the place of beginning; it being intended by this grant to convey to the said party of the second part the entire residue of the farm on which the said party of the first part formerly resided, with all the rights and privileges that have hitherto remained vested in the said Holderby, except the above reservations.

Twelfth. All that certain tract of land which, in a certain deed executed by E. S. Holderby and C. A. Holderby, his wife, to said C. P. Huntington, dated the first day of September, 1871, recorded in the recorder's office of said county on the 5th day of September, 1871, in Deed Book C, page 186, is bounded and described as follows, to wit: Beginning at a stake, corner of James H. Poage, standing 50 feet from the centre line of the Chesapeake and Ohio railroad; thence N., 76 E., and parallel with said road 1,928 feet to corner of Huntington's land; thence with his line S., 5° 45 E., 1,500 feet to corner of Huntington; thence S., 76 W., and parallel with the railroad 1,560½ feet to James H. Poage's line; thence with Poage's line N., 17° 35′ W., 1,490$_{1}^{6}$ feet to the beginning; excepting and reserving, however, out of the above boundary 16 acres sold and conveyed to C. F. Parsons, and, also, three and ($_{100}^{21}$) twenty-one-hundredths acres sold and conveyed to Joseph and Foster Stewarts and Wm. Pennybacker, leaving after reserving as above 40.37 acres, be the same more or less.

Thirteenth. All that certain tract of land which, in a certain deed executed by J. Harvey Poage and Sarah A., his wife, to said C. P. Huntington, dated the 11th day of October, 1871, recorded in the recorder's office of said county on the 12th day of October, 1871, in Deed Book C, page 216, is bounded and described as follows, to wit: Beginning at a stake on the line of the Poage and Hanly farms, being the southwest corner of the land that the said Poage and wife conveyed to A. Laidley; thence N., 76 E., parallel with the
729 Chesapeake and Ohio railroad (1,111) eleven hundred and eleven feet to the northwest corner of land E. S. Holderby conveyed to Huntington; thence S. 18° 53′ E., (772.8) seven hundred and seventy-two and eight-tenths feet to a stake on the south line of Ninth avenue; thence with said south line of Ninth avenue S., 76 W., (1,108) eleven hundred and eight feet to what was formerly the Hanly line; thence with said Hanly line N., 19° 6′ W., (773.06) seven hundred and seventy-three and six-hundredths feet to the beginning containing nineteen and sixty one-hundredths acres.

Also, all those certain tracts, pieces or parcel- of land situate, lying and being in the county of Kanawha and State of West Virginia:

First. All that certain tract of land lying and being in the township of Cabin Creek, in the county and State aforesaid, containing thirty-six and two-thirds acres, and bounded as follows: Beginning where once stood two box elders on the bank of the Kanawha river, upper corner, to a survey of 400 acres, made for and patented to Andrew Donnelly, and now claimed as the corner between the lands of the Kanawha & Ohio Coal Co., and the land herein granted, and running thence with the line between said lands, the original call of said survey being S., 30 E, 20 poles to a beech at the foot of the hill; thence with the next line of said survey, the call being S., 60 W., 50 poles to a beech and sugar tree; thence with the lines of same till they intersect the line of lands belonging to Henry L. Creary, and with his line to Cabin creek; thence down Cabin creek with its meanders, and binding thereon, to the Kanawha river; thence up said river with its meanders, and binding thereon, to the place of beginning; being the same premises which were conveyed to the said C. P. Huntington by John McConihay by deed dated March 31, 1870, recorded in the recorder's office of said Kanawha county April 1st, 1870, in Deed Book No. 26, page 274.

Second. All the following property, to wit: A tract of land
730 lying on the south side of Kanawha river, adjoining the lands of William Bradford on the lower side, and the lands of John McConahay on the upper side, and known as the Burke and Lewis or "Burke place," containing by survey 149 acres, 2 roods and 14 perches of bottom land, and 68 acres of hillside, being the same land assigned to the devisees of Col. William Dickinson in the division of the bottom lands of the late firm of Dickinson & Shrewsberry, as will appear by the report of Commissioners John L. Cole, M. P. Wyatt and Joel Ruffner of record in the recorder's office of Kanawha county, and also filed with the chancery suit of Dickinson *versus* Shrewsberry in the circuit court of Kanawha county. The same lands were subsequently assigned and allotted to H. C. Dickinson and his wife in the division of the lands belonging to the devisees of Col. William Dickinson, as will appear by a deed of record between said devisees, the metes and bounds of which lands are as follows: Beginning at an elm, one live and one dead sycamore, near the river's edge, immediately above the mouth of a drain, corner to said land and the land now owned by William Bradford, and running thence S., 5½ W., 39 poles to a stake on the upper bank of said drain; thence S., 45½ W., crossing the drain at 5 poles, 8½ links, and the fence at the road at 13 poles, in all 29 poles, to a stone on the hillside, with a young sycamore and 4 buckeyes as pointers; thence S., 48½ E., crossing Wilmot's branch at 186 poles, in all 208 poles, to a stone on a hillside, corner to Lewis & Burke tracts; thence S., 37½ E., crossing a drain at 168, in all 288 poles, to a stone marked "D. S.," also a buckeye, ash and birch, a double poplar, a dogwood and ironwood marked as pointers, corner to John McConahay's land; thence with his line N., 51° E., crossing N. E. side of road and stone pile at 55 poles, in all 112 poles, to a locust on the

Kanawha River bank in a fence row; thence leaving the said McConahay's line and running down the river and binding thereon at low-water mark to the beginning corner.

Also, three lots, being parts of an island in Kanawha river,
731 known as Witcher's Creek island, the said three lots being numbered 2, 6 and 7 in the partition of the real estate of Henry Hannan, dec'd, which contain together 2 acres, 1 rood and 19 perches, and were assigned by metes and bounds to the devisees of Col. William Dickinson in the before-mentioned partition of the bottom lands of Dickinson & Shrewsberry, and subsequently assigned to the grantors in this deed in the partition of the lands of Col. William Dickinson, to which reference is hereby had for a fuller description thereof.

Also, a tract of land near to and separated from the before-mentioned "Burke place" by a small tract of land known as McConahay's Hannan lot, which land so sold is known as Dickinson & Shrewsberry's "Hannan lot," was sold by the heirs of Henry Hannan to Samuel Burke, and by him to Dickinson & Shrewsberry, and in the before-mentioned partition of the bottom lands of Dickinson & Shrewsberry was assigned to the devisees, Joel Shrewsberry, and in the partition of the lands of Joel Shrewsberry subsequently among his devisees was allotted and assigned to Mrs. Caroline Quarrier. The same land was, to wit, on the — day of ——, 186–, conveyed and transferred to Samuel A. Miller as trustee for his wife, Helen Q. Miller, and has been by deed of this date conveyed and sold by said Miller, trustee, and the same Miller and wife to the said H. C. Dickinson; all of which will appear by the said several deeds of record in Kanawha county; which said lands, containing 24 acres of bottom and 15 acres of hill land, *is* more particularly described as follows: Beginning at a stone marked "D. S.," near the upper corner of a newly enclosed field—original corner in the division of the Hannan lands—and running N. 51° 20′, crossing Field's creek at 58 poles, passing an apple tree marked "I" an- "=," on the other side at 86 poles and 20 links, crossing the creek again at from 102 to 106 poles, in all 112 poles, to a hickory on top of the bank, original corner in the division between lots No. 6 and 7; thence down the river with its meanders and binding thereon at low-water mark to a stake at the end of a fence row, corner to said lot and John McCon-
732 ahay's Hannan lot; thence with the line between said lots and fence S., 51° 25′ W., crossing the country road at 68 poles, in all 118 poles, to a stone marked "$\frac{D.S.}{M}$" on the back line of the Preston survey; thence with same S., 37½ E., 59 poles to the beginning.

Also, another tract of land back — and adjoining the "Burke" or "Burke & Lewis place," containing by survey 377¾ acres, the same being the interest of the devisees of Col. William Dickinson and Joel Shrewsberry in a tract of mountain land containing 1,700 acres, lately owned by John McConihay, Grant's heirs, Herrick Dickinson and Shrewsberry, and the children of Mrs. Amelia Bradford, which said interest so owned by the devisees of Dickinson & Shrewsberry at this time is more particularly described and set out

in the proceedings of a chancery suit lately pending in the circuit court of Kanawha county for the division and partition thereof, in the name of Dickinson and Shrewsberry *vs.* John McConahay and others, to which reference is hereby had for a full and minute description -hereof; being the same premises which were conveyed to said C. P. Huntington by Henry C. Dickinson and Sally J., his wife, by deed dated June 23, 1870, recorded in the recorder's office of said Kanawha county, June 25, 1870, in Deed Book 27½, page No. 57, and subject to the reservations and covenants contained in said deed.

Third. All that certain tract of land, containing one hundred and seventy-one acres, more or less, situate in said Kanawha county, known as the Cottage farm, and generally described as follows: Commencing at a sycamore tree on the bank of Coal river, corner to George Washington survey and to farm of J. F. Hansford; thence with said Hansford's line to a stake on the bank of the Kanawha river; thence down said river and binding thereon to stake, corner of J. S. Cunningham; thence with said Cunningham's line to stake in said line and corner to Jos. S. Simms; and thence with said Simms' line to stake in said line and corner to J. S. Cunning-
733 ham; and thence with said Cunningham's line to Coal river, corner of said Cunningham; and thence up said river and binding on the same to the place of beginning; being the same premises which were conveyed to the said C. P. Huntington by Mrs. Elizabeth H. Thompson by deed dated July 26th, 1870, recorded in the recorder's office of said Kanawha county, August 17th, 1870, in Deed Book No. 27½, page 78.

Fourth. All that certain piece of land situate in St. Albans, in said county and State, bounded and described as follows, viz: Beginning at a stone on the upper side of the James river and Kanawha turnpike, leading from St. Albans to Charleston, it being a corner to Mrs. Helen M. Cunningham's land; thence with a line thereof (1) S. 0° 30′ W., 80 poles to a stone, another corner to the same; (2) thence S., 60° 45′ E., 84$\frac{2}{5}$ poles to a stone, corner to Joseph Y. Simms' and in line with C. P. Huntington's (formerly Mrs. Elizabeth H. Thompson's) land; (3) thence with a line of the last named S., 8° 30′ E., 122½ poles to a cross and hole marked with a hatchet on a rock on the edge of Coal river; thence down the river and binding thereon at low water, the following courses and distances, viz.: (4) N., 43 W., 28 poles; (5) N., 49° 30′ W., 18 poles; (6) N., 60° W., 27 poles; (7) N., 58° 30′ W., 130 poles, passing the upper end of lock No. 1 at 42 poles, passing the lower end of the same at 55 poles, to a stake near a sycamore tree; (8) N., 65° W., 20 poles; (9) N., 22° W., 23½ poles; (10) N., 5° 45′ W., 30 poles; (11) north, 24 poles; (12) N., 4° 30′ W., 50 poles to a stake, thence leaving Coal river and running back to the town lots of I. Lasley and others; (13) S., 87½° E., 27½ poles to a stake; (14) N., 1½° E., 11 poles to a stake; (15) S., 87½ E., 11$\frac{4}{10}$ poles to a stake; (16) N., 1½° E., 9 poles with the garden fence of Mrs. Mary Hudson to the James river and Kanawha turnpike; (17) thence with said turnpike S., 87½° E., 9$\frac{1}{10}$ poles to a stake; (18) thence north 152$\frac{3}{5}$ poles to a stone on the south side of Kanawha river at low-water mark; (19) thence up said river

with its meanders and binding thereon the following courses
734 and distances, viz: S., 57° E. $40\frac{22}{25}$ poles to a stake; (20) S., 61° E., 30 poles to a stake; (21) S., 67° E., 40 poles; (22) S., $71\frac{3}{4}$ E., $19\frac{3}{5}$ poles to a maple corner to the land of C. P. Huntington (formerly Mrs. E. H. Thompson); (23) thence leaving the river and with a line thereof S., 0° 30′ W., 131 poles to a stake corner to J. T. Simms' one-acre lot below the turnpike; (24) thence with a line of the same N., 89° 10′ W., $11\frac{3}{25}$ poles to another corner to same; (25) thence with another line of the same 0° 50′ W., $17\frac{1}{5}$ poles, passing through Simms' barn about the center, and crossing the James river and Kanawha turnpike to the upper side thereof to a line of said J. T. Simms' 19-acre lot; (26) with a line of said lot and with a line of Mrs. H. M. Cunningham's land N., 60° 45′ W., $47\frac{7}{25}$ poles to the beginning; containing $258\frac{3}{8}$ acres of land, a plot whereof is annexed to a deed made by John S. Cunningham and Helen M., his wife, to said C. P. Huntington, dated May 9, 1871, recorded with the said plot in the recorder's office of said Kanawha county, May 16, 1871, in vol. $27\frac{1}{2}$, page 125, &c, being the same premises conveyed by said deed, and subject to the reservations therein contained, and noted on said plot.

And also all contracts or title bonds for the sales of lands in the county of Cabell, West Virginia, which have been heretofore signed to the said C. P. Huntington, and the deeds of which have not yet been given.

[$600 revenue stamps, canceled.]
[United States internal-revenue $200.00 stamp.]
[United States internal-revenue $200.00 stamp.]
[United States internal-revenue $200.00 stamp.]

Together with all and singular the tenements, hereditaments and appurtenances to the said several tracts or parcels of land belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever, as well *as* in law as in equity, of the said parties of the first part, of, in or
735 to the above-described premises and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, its heirs, successors and assigns, forever. And the said C. P. Huntington doth hereby covenant with the said party of the second part that he will warrant specially the property hereby conveyed.

Witness the following signatures and seals:

C. P. HUNTINGTON. [SEAL.]
E. S. HUNTINGTON. [SEAL.]

Sealed and delivered in presence of—

JAS. H. STORRS.
CHARLES NETTLETON.

STATE OF NEW YORK, *City, County, and State of New York,* } *To wit, ss:*

I, Charles Nettleton, a commissioner appointed by the governor of the State of West Virginia for the State of New York, do certify that Collis P. Huntington, whose name is signed to the foregoing instrument, bearing date on the sixteenth day of October, A. D. one thousand eight hundred and seventy-one, has acknowledged the same before me in my State aforesaid.

Given under my hand and official seal this 16th day of October, A. D. 1870.

CHARLES NETTLETON,
[SEAL.] *Commissioner for West Virginia in New York,* 117 *Broadway, New York City.*

736 STATE OF NEW YORK, *City and County of New York,* } *To wit, ss:*

I, Charles Nettleton, a commissioner appointed by the governor of the State of West Virginia for the State of New York, do certify that Elizabeth S. Huntington, the wife of Collis P. Huntington, whose name is signed to the foregoing instrument, bearing date on the sixteenth day of October, A. D. one thousand eight hundred and seventy-one, personally appeared before me in the county and State aforesaid, and, being examined by me privately and apart from her husband and having the instrument aforesaid fully explained to her, she acknowledged the said instrument to be her act and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand and official seal this 16th day of October, A. D. 1871.

{ Seal Charles Nettleton, Commissioner for West Virginia in New York. }

CHARLES NETTLETON,
Commissioner for West Virginia in New York,
117 *Broadway, New York City.*

RECORDER'S OFFICE, CABELL COUNTY,
WEST VIRGINIA, *December 6th*, 1871.

This deed from Collis P. Huntington and wife to the Central Land Company of West Virginia, with United States revenue stamps thereon for six hundred ($600) dollars, was this day presented in this office and, together with the certificates thereon endorsed, admitted to record.

Teste:

T. J. HAYSLIP, *Recorder*,
By THOS. J. F. HAYSLIP, *Dept.*

737 EXHIBIT D.

This deed, made this 26th day of Jan'y, 1882, between Sarah H. G. Pennybacker, of the first part, and John B. Laidley, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of five hundred dollars, the receipt whereof is hereby acknowledged, does grant unto the party of the second part, and doth bargain, sell and convey unto him all that certain tract of land situate in the city of Huntington, county of Cabell, and State of West Virginia, containing 240 acres, known as lot No. 4, in the partition of the estate of Isaac Frampton, Jr., deceased, and conveyed to the said Sarah H. G. Pennybacker by Rebecca J. Everett by deed bearing date the 18th day of August, A. D., 1865, and recorded in the county court clerk's office of Cabell county, Deed Book (A), page 236; for further description reference is made to said deed. Reserving one acre, including the brick house on Fifth avenue. And the said party of the first part does hereby covenant with the party of the second part that she will warrant generally the property hereby conveyed.

Witness the following signature and seal:

S. H. G. PENNYBACKER. [SEAL.]

738 STATE OF WEST VIRGINIA, *Cabell County,* } *ss:*

I, F. F. McCullough, a notary public in and for the county aforesaid, do certify that S. H. Pennybacker, whose name is signed to the writing above, bearing date on the 26th day of January, 1882, has this day acknowledged the same before me in my said county.

Given under my hand this 26th day of January, 1882.

F. F. McCULLOUGH,
Notary Public, Cabell Co., W. Va.

STATE OF WEST VIRGINIA:

In the clerk's office of the county court of Cabell county, in the State aforesaid.

This deed, from S. H. G. Pennybacker to John B. Laidley, bearing date the 26th day of January, 1882, was this day presented to me, the clerk of the county court aforesaid, and the same, together with the certificate of acknowledgment thereon endorsed, is admitted to record in my office aforesaid.

Given under my hand this 26th day of January, 1882, at 9 o'clock and 30 minutes p. m.

M. S. THORNBURG,
Clerk Cabell County Court.

739 EXHIBITS E AND F WITH PLAINTIFF'S BILL.

(Filed Nov. 11th, 1890.)

THE STATE OF WEST VIRGINIA:

Pleas.

At a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1887.

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment.

Consolidated.

Be it remembered that heretofore, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 23rd day of December, 1887, the mandate of the supreme court of this State in these causes *were* received and entered in the law order book and is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment.

Consolidated.

A copy of the decision of the supreme court of appeals in this cause, certified by the clerk of that court, was this day presented to the court and is in these words, to wit:

WEST VIRGINIA, *To wit:*

At a supreme court of appeals held in Charleston, in Kanawha county, on the 26th day of November, 1887.

740 JOHN B. LAIDLEY, Plaintiff Below, Plaintiff in Error,
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA, Defendant Below, Defendant in Error.

Upon a writ of error to a judgment of the circuit court of Cabell county, rendered on the 22nd day of December, 1884, in two cases consolidated.

The court, having maturely considered the transcript of the record of the judgment aforesaid and the arguments of counsel thereon, is

of opinion, for reasons stated in writing and filed with the record, that there is error in said judgment. It is therefore considered by the court that the judgment of the circuit court of Cabell county, rendered in these cases on the 22nd day of December, 1884, be, and the same is hereby, set aside, reversed, and annulled, and that the plaintiff in error recover against the defendant in error his costs about the prosecution of his writ of error in this court in this behalf expended.

And this court proceeding to render such judgment in these cases as the circuit court of Cabell county should have rendered, it is considered that the verdict of the jury rendered in these cases be, and the same is hereby, set aside and a new trial awarded, the costs of the former trial to abide the event of the suit; and these cases are remanded to the circuit court of Cabell county for a new trial to be had therein according to the principles stated in the written opinion aforesaid, and to be further proceeded in according to law.

Which is ordered to be certified to the court of Cabell county.

A copy from the record.
Attest: O. S. LONG, *Clk.*

In pursuance whereof is is considered that the judgment aforesaid of this court be, and the same is hereby, set aside, reversed, and annulled, and that the plaintiff recover against the defendant his costs by him about his writ of error in the supreme court
741 of appeals expended; and is further considered that the verdict of the jury be, and the same is hereby, set aside and a new trial is awarded the plaintiff, the costs of the former trial to abide the result of the suit.

And on another day, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 16th day of January, 1888, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment.

Consolidated.

On motion of John B. Laidley, the plaintiff in the above consolidated actions, and the judge of this court, the Hon. Ira J. McGinnis, deeming it improper in his opinion for him to preside at the trial and hearing of these actions, the same are ordered to be and are removed to the circuit court of Summers county, there to be further proceeded in, tried, heard, and determined according to law.

And the clerk of this court is directed forthwith to transmit to the clerk of said court the original papers in these actions and a copy of the orders entered herein.

And on another day, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 31st day of August, 1889, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA } In Ejectment.

and

742 JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST —. } In Ejectment.

Consolidated.

The foregoing nineteen cases having been remanded to this court from the circuit court of Summers county, on motion of plaintiff the same are docketed and continued until the next term of this court.

And on another day, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 12th day of May, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment.

Consolidated.

This day came the parties, by their attorneys, and thereupon the defendant, by its attorneys, tendered a special plea to the jurisdiction of the court, to the filing *to* which the plaintiff objected; which objection, being argued by counsel, is sustained and said plea rejected; and thereupon the plaintiff tendered a certified copy of the record of the chancery suit of The Central Land Company of West Virginia against the said Laidley and others, lately pending in the circuit court of Summers county, and the same mentioned and referred to in the order in these cases entered on the 5th day of September, 1888, and also a certified copy of the mandate of the supreme court of appeals entered in said chancery cause on the appeal mentioned

in said order of September 5th, 1888; which record and man-
743 date are ordered to be filed; and thereupon the plaintiff moved the court to render the judgment upon the said order of September 5th, 1888, and the agreement of the defendant therein contained in favor of the plaintiff against the defendant for a fee-simple estate in the lands in the declaration mentioned; to which motion the defendant objected; and the court, not be- advised as to what judgment it should render therein, takes time to consider thereof.

"The plea to the jurisdiction," referred to in the foregoing order, is in the words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

The record of the chancery suit of the Cnetral Land Company of West Virginia against John B. Laidley and others, referred to in the foregoing order, is in the words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

The mandate of the supreme court of appeals in said chancery cause, referred to in the foregoing order, is in the words and figures following, to wit:

WEST VIRGINIA, *To wit:*

At a supreme court of appeals held in Charleston, in Kanawha county, on the 11th day of February, 1889.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA, Plaintiff Below, Appellant,
vs.
JOHN B. LAIDLEY and Others, Defendants Below, Appellees.

Upon an appeal from and supersedeas to a decree of the circuit court of Summers county, rendered on the 14th day of May, 1888, erroneously described in the petition and former orders of the 9th day of May, 1888.

The court, having maturely considered the transcript of the record of the decree aforesaid and the arguments of counsel thereof, is of opinion, for reasons stayed in writing and filed with the record, that there is no error in said decree. It is therefore adjudged, ordered, and decreed that the decree of the circuit court of Summers county
rendered in this cause on the 14th day of May, 1888, be, and
744 the same is hereby, affirmed, and that the appellant do pay to the appellees thirty dollars damages and their costs about their defense in this court in this behalf expended, which is ordered to be certified to the circuit court of Summers county.

A copy from the record.

Attest: O. S. LONG, *Clk.*

The order of the circuit court of Summers county of September 5th, 1888, referred to in the foregoing order, is in the words and figures following, to wit:

WEST VIRGINIA:

In Summers County Circuit Court, Sept. 5th, 1888.

J. B. LAIDLEY, Plaintiff,
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA, Defendant,
} In Ejectment.

and

J. B. LAIDLEY, Plaintiff,
vs.
SAME, Defendant.
} In Ejectment.

Consolidated.

This day came the parties, by their attorneys, and the defendant, by its attorneys; and thereupon the defendant moved the court for a stay of proceedings in these causes until the decision of the supreme court of appeals hereinafter mentioned, upon the ground that there is pending in the supreme court of appeals, in this State, an appeal by the defendant from a decree of this court in the chancery cause of The Central Land Company of West Virginia against said J. B. Laidley and others, and read in evidence in support of said motion the record of said chancery suit and the appeal therein; and the plaintiff resisted said motion and insisted upon a trial of said action of ejectment, and the court, having fully consid-
745 ered the matters arising upon said motion, doth decide to stay said actions until the decision of the appellate court in said chancery cause, upon condition, and not otherwise, that said defendant, The Central Land Company of West Virginia, agrees here, in open court, that judgment be at once entered for the plaintiff in the said actions of ejectment for the estate in fee-simple in the lands in the declarations in said actions described, without further defence, in event the decree aforesaid in said chancery suit be affirmed upon said appeal so far as it relates to the title in the land, but judgment so to be entered to be without prejudice to the right of the defendant, *of* any it has, to compensation for any improvements it may have placed upon the lands in controversy; and thereupon the said defendant in open court accepted said stay of proceedings in said actions of ejectment upon the terms aforesaid.

A true copy from the record.

Teste: B. L. HOGE, *Clk.*

And on another day, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 13th day of May, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment.

This day the defendant, The Central Land Company of West Virginia, appeared, by its attorneys, and tendered its claim and account for improvements made on the land mentioned in plaintiff's declaration, and the same is ordered to be filed, which is done.

The "claim and account for improvements," referred to in the foregoing order, is in the words and figures following, to wit:

746 (Here insert it; omitted by order of plaintiff.)

And on the same day, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 13th day of May, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. OF W. VA. } In Ejectment.

and

JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. OF W. VA. } In Ejectment.

Consolidated.

This day again came the parties, by their attorneys, and thereupon the court doth overrule the motion of the plaintiff, made on yesterday, for judgment against the defendant, pursuant to the conditions and agreement of the order entered in this cause on the 5th day of September, 1888, and refused to enter said judgment; to which ruling of the court the plaintiff objected and excepted, and his said exceptions are saved to him; and thereupon the plaintiff tendered his statement of claim *fro* profits and other damages which he means to demand in these suits, which is ordered to be filed; and on his motion it is ordered that the as-essment of said damages and the allowances for improvements, if any, be postponed until after the verdict on the title is recorded. Thereupon came a jury, to wit, Rezin Swann, Robert Caldwell, Colwelza Conner, H. C. Bellamy, Ewell Bias, Harvey Templeton, L. D. Hughes, Albert Keller, Henry Kratzen, L. G. Blankenship, B. F. Dillon, and John L. Dillon, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issues joined herein and a true verdict render according to the evidence.

And the jury having heard a part of the evidence, they were, with

the assent of the parties, adjourned by the court until tomor-
747 row morning, at 8½ o'clock.

The *sattement* of claim for profits referred to in the foregoing order is in the words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

And on another day, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 14th day of May, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. OF W. VA. } In Ejectment.

and

JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. OF W. VA. } In Ejectment.

Consolidated.

This day again came the parties, by their attorneys, and thereupon the jury that was sworn and impanneled on the trial of this cause on yesterday appeared in court, pursuant to adjournment on yesterday, and the jury, having fully heard the evidence and arguments *od* counsel, retired to their room to consider of their verdict, and after some time returned into court, and not having agreed upon a verdict, they were, with the assent of the parties, adjourned by the court until tomorrow morning at 6 o'clock.

And on another day, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 15th day of May, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND COMPANY OF W. VA. } In Ejectment.

and

748 JOHN B. LAIDLEY
vs.
CENTRAL LAND COMPANY OF W. VA. } In Ejectment.

Consolidated.

This day again came the parties, by their attorneys, and thereupon the jury that was sworn and impanneled on the trial of this cause on a former day of the present term appeared in court, pursuant to adjournment on yesterday, and again retired to their room to consider of their verdict, and after some time returned into court,

and being unable to agree upon a verdict they were, with the assent of the parties, discharged by the court.

And on another day, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 4th day of September, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND CO. OF W. VA. } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND CO. OF W. VA. } In Ejectment.

This day came the parties, by their attorneys, and thereupon came a jury, to wit, William Cooper; E. G. Blankenship, David Wolf, Phillip Merritt, Daniel Swann, Henry Lute, Jeremiah Ball, Jno. H. Williams, M. E. Bledsoe, Wm. Killgore, Clifton Bias, and John L. Porter, who were drawn, selected, tried, and sworn in the manner required by law to well and truly try the issue joined herein and a true verdict render according to the evidence.

And the jury having heard a part of the evidence they were, with the assent of the parties, adjourned by the court until tomorrow morning at 9 o'clock.

And on another day, to wit, at a circuit court held for Cabell
749 county, at the court-house thereof, on the 5th day of September, 1890, there was another order made and entered in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF W. VA. } In Ejectment.

and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF W. VA. } In Ejectment.

Consolidated.

This day again came the parties, by their attorneys, and thereupon the jury that was sworn and impaneled on the trial of this cause on the former day of this term appeared in court pursuant to adjournment on yesterday.

And the jury, having fully heard the evidence and arguments of counsel, retired to their room to consider of their verdict, and after some time returned into court and on their oaths do say: "We, the jury, find for the plaintiff, John B. Laidley, the lands in the

declaration mentioned, and described by the metes and bounds reported by surveyor Thornburg in his report filed in these causes, as follows, to wit: Beginning at the north end of the upper line, on the Ohio river, thence S. 16 26 E., crossing the south line of Second avenue nine feet west of the southwest corner of Second avenue and Seventh street (in the city of Huntington), and from this point measuring 6,376 feet, crossing the Chesapeake and Ohio railroad and Four-pole creek to a stake; thence south 2 deg. 18 east, passing through a large white oak line tree, standing on or near the top of the river hill at 986 feet, and continuing the same course for 2,363 feet, making in all 3,354 feet, to a stone, from which an 18-inch. chestnut oak marked as a side line bears north 2½ W. 22 feet (the stone sets where the chestnut oak corner tree stood); thence with the old Beuhring line S. 49 42 west 2,439 feet to a stake; thence leaving the Beuhring line N. 52 30 west 636½ feet to a white oak, north 13 35 E. 750 1,929 feet to a black oak and a white oak, N. 72 15 east 835 feet to a whit- oak, N. 32 56 east 900 feet to where two white oaks stood, N. 10 20 west 1,937 feet to a stake in the creek bottom, S. 73 25 west $1\frac{32}{100}$ feet to a stake; thence N. 16 35 west, crossing Four-pole creek and the railroad, and at 5,962 feet crossing the south line of Second avenue 124½ feet easterly from the southeast corner of Fifth street and Second avenue and continueing thence the same course to the Ohio river; thence up the river N. 75 40 east 784¾ feet to the beginning, excepting therefrom the following-described parcel, to wit: Beginning at a point on the upper line of the entire tract about 14 feet south of the south line of Fifth avenue (in the city of Huntington), thence south 69¾ west with the old turnpike 210 feet, south 16 26 east 210 feet, N. 69¾ east 210 feet to the upper line, and with it north 16 26 west 210 feet to the beginning, and that the plaintiff hath an estate in fee-simple in the lands so found for him."

Thereupon the defendant, The Central Land Company of West Virginia, by its attorneys, moved the court to set aside the verdict of the jury rendered herein, as aforesaid, on the grounds that the same is contrary to the law and the evidence.

And on another day, to wit, at a circuit court held for Cabell county, at the court-house thereof, on the 12th day of September, 1890, there was another order made in this cause, which is in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. OF W. VA.
and
JOHN B. LAIDLEY
vs.
CENTRAL LAND CO. OF W. VA.
} In Ejectment.

This day came again the parties, by their attorneys, and thereupon the defendant's motion to set aside the verdict of the jury rendered herein on a former day of the present term and to
751 grant it a new trial, being argued and considered, is overruled by the court.

And the parties waived a jury and submitted to the court, in lieu of a jury, the question of the damages and mesne profits to said plaintiff, and the allowance to said defendant for improvements made by the defendant on said premises described in the verdict of the jury herein; and the court, after hearing the evidence and arguments of counsel, and after setting off the amount allowed the plaintiff for the annual value of said premises against the amount allowed the said defendant for improvements, *the court* doth find for the said plaintiff one cent.

It is therefore considered by the court that the plaintiff, John B. Laidley, recover of the defendant the possession of the said premises according to the verdict of the jury herein, and one cent found by the court, together with his costs about the prosecution of his said actions in that behalf expended, including $10.00 as allowed by law.

And a writ is awarded the plaintiff, to the sheriff of Cabell county to be directed, to cause him to have the possession of his premises aforesaid.

Thereupon, on application of the defendant, it is ordered that the execution of this judgment be suspended for the period of 60 days, to enable it to present its petition to the supreme court of appeals, or a judge thereof in vacation, for a writ of error thereto, upon it or some one for it giving bond before the clerk of this court in the penalty of $1,000.00 and conditioned according to law.

Memorandum.

Be it remembered that on this day the defendant tendered one several bills of exceptions to the rulings, opinions, and decisions of the court during the trial of this cause, which are in the words and figures following, to wit:

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA } In Ejectment.

752 and

JOHN B. LAIDLEY
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Ejectment.

Consolidated.

Be it remembered that upon the trial of these consolidated actions the plaintiff, to maintain the issue joined therein on his part, introduced and read in evidence to the jury the following deeds, records, and writings, to wit:

1. A deed from Rebecca J. Everett to Sarah H. G. Pennybacker, dated the 18th day of August, 1865, and the certificates of acknowledgment and recordation thereon endorsed, in the words and figures following, to wit:

(Here insert; omitted by order of plaintiff.)

2. A deed from Sarah H. G. Pennybacker to the plaintiff, John B. Laidley, dated the 26th day of January, 1882, and the certificates of acknowledgment and recordation thereon endorsed, in the words and figures following, to wit:

(Here insert it; omitted by the order of the plaintiff.)

3. A paper purporting to be a deed from John M. Pennybacker and Sarah H. G. Pennybacker, his wife, to C. P. Huntington, dated the 25th day of February, 1870, and the certificates and acknowledgment thereon endorsed, in the words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

The plaintiff accompanied the offering of this deed with the statement that he would ask the court to instruct the jury as to its legal effect before the case was submitted to the jury.

4. A deed from C. P. Huntington to the defendant, The Central Land Company of West Virginia, dated the 16th day of October, 1871, and the certificates of acknowledgment and recordation thereon endorsed, in the words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

753 5. The report of Surveyor James L. Thornburg and the plat accompanying the same, made to this court in these consolidated actions, in the words and figures following, to wit:

(Here insert it; omitted by order of the plaintiff.)

6. An agreement made between the plaintiff, John B. Laidley, and the defendant, The Central Land Company of West Virginia, on the 5th day of September, 1888, in these consolidated actions while pending in the circuit court of Summers county, and entered upon the law order book of said court; which agreement is in the words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

7. The record of the chancery cause of The Central Land Com-

pany of West Virginia *vs.* John B. Laidley *et als.*, lately pending in the circuit court of Summers county and being the record of the same cause referred to in the said agreement as standing at the time of said agreement on appeal in the supreme court of appeals; which record is in the words and figures following, to wit:

(Here insert it; a printed copy filed.)

8. The mandate of the supreme court of appeals affirming on appeal the decree of the circuit court of Summers county entered in said chancery cause of The Central Land Company of West Virginia *vs.* John B. Laidley *et als.*; which mandate is in the words and figures following, to wit:

(Here insert it; see page 6 of this record.)

Thereupon the plaintiff, further to maintain the issue on his part, proved the following facts, to wit:

(*a.*) That Sarah H. G. Owings and John M. Pennybacker were married to each other in Howard county, Maryland, on the 28th day of June, 1860, and immediately removed to Virginia, now West Virginia, where they lived together as husband and wife from the time of said removal down to the 5th day of July, 1881.

(*b.*) That the said John M. Pennybacker died on the 5th day of July, 1881.

(*c.*) That Charles T. Everett, the husband of Rebecca J.
754 Everett, died in the fall of 1862 or the spring of 1863, and that the said Rebecca J. Everett, at the time of the execution of her deed to Sarah H. G. Pennybacker, on the 18th day of August, 1865, hereinbefore set out, was a *feme sole* and the widow of Charles Everett, deceased.

(*d.*) That J. L. Thornburg, in making said survey, found the natural corners, and that his survey and report were accurate.

And the said defendant, to maintain the issue on its part joined, introduced and read in evidence to the jury the following deed and other writings, to wit:

1. A deed from James H. Brown and others to Albert Laidley, dated the 29th day of December, 1848, and the certificates of acknowledgments and recordation thereon endorsed in the words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

(2.) A deed from Albert Laidley and wife to C. P. Huntington, dated the 13th day of April, 1870, together with the certificates of acknowledgment and recordation thereon endorsed in the words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

And the said defendant proved that for the years 1884 and 1885 the land in controversy (omitted by order of plaintiff).

And thereupon said defendant, further to maintain the issue upon its part, had H. C. Simms sworn as a witness in its behalf, who testified as follows:

Q. Were you present at the last term of court?

A. I was.

Q. Were you present during the trial of the case of Laidley *v.* The Central Land Company of West Virginia?

A. Yes, sir.

Q. Did you listen to that trial?

A. Yes, sir; I was one of the attorneys.

Q. Did you hear the motion made by the plaintiff in that case upon the introduction of the order that they have now introduced as the Summers County order?

755 A. Yes, sir.

Q. Now, then, did you hear the motion for judgment?

A. Yes, sir; I heard the judgment of the court as to the setting forth of this order as filed by Mr. Brown, attorney for Laidley.

Q. Do you remember what the court said to Mr. Brown in relation to that order?

A. I remember it.

Q. State whether or not, upon the introduction of that, the plaintiff didn't waive any claim they had in open court as to the right of judgment upon that order.

To the asking of the last question the plaintiff objected; which objection the court sustained, and said defendant excepted to the ruling of the court in sustaining said objection and prayed that its exception be saved to it, which is accordingly done.

Q. Please state whether or not upon that order there was any argument of counsel before the circuit court. I mean the Summers circuit court order.

A. Yes, sir; it was argued.

Q. Please state if, after that argument, the plaintiff waived any claim as to judgment on it.

Objected to by the plaintiff. Objection sustained, and said defendant again excepted.

Q. I want to ask you if the court upon that occasion didn't give the plaintiff the right either to demand judgment or to allow the defendant to appear.

Pl't'f, by counsel, objected to asking and answering this question; which objection was sustained, and said defendant again excepted.

Q. Please state whether or not, after the decision by the court, the claim under the order was not abandoned and the defendant appeared and the case continued on the merits.

Objected to by the plaintiff and sustained by the court, and defendant again excepted.

Q. Please state whether or not the plaintiff didn't elect upon an oral decision from the court to waive their claim under that agreement and go into a trial upon the merits.

756 Objections by plaintiff and sustained by the court, and the said defendant again excepted.

And thereupon said defendant rested its case.

And thereupon the plaintiff, as evidence in rebuttal, introduced and read to the jury the fol-owing deeds, decrees, and other records and writings:

1. A deed from Albert Laidley and wife to Isaac Frampton, dated the 6th day of November, 1856, and the certificates of acknowledgment and recordation thereon endorsed in the words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

2. The last will and testament of Isaac Frampton, dated the 12th day of May, 1859, and the certificate of the probate thereof in the words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

The plaintiff proved the following facts:

(a.) That Isaac Frampton, the son and devisee of Isaac Frampton, the elder (omitted by order of plaintiff).

The said plaintiff also introduced and read in evidence to the jury the following orders, decrees, deeds, and other writings, to wit:

1. A decree of the circuit court of Cabell county, entered in the chancery order book of said court on the 27th day of March, 1863, in the words and figures following, to wit:

P. H. McCULLOUGH and E. M. FRAMPTON, Compl., } In Chancery.
vs.
REBECCA J. EVERETT and Others. }

The commissioners appointed, &c.

(Here insert *e*; omitted by order of plaintiff.)

2. An order of said court, made at the same term of court, in relation to the destruction of the record of the court, in the words and figures following, to wit:

(Here insert it; omitted by order of the plaintiff.)

3. The plot of the lands of which Isaac Frampton, Jr., died seized and possessed, representing the said land as divided into four lots; which plot is in the words and figures following, to wit:

757 (Here insert it; omitted by order of plaintiff.)

4. A deed between Rebecca Everett, David Frampton and Clara, his wife, and Hiram Frampton and Clarissa, his wife, by John Laidley, special commissioner, to Ephriam M. Frampton, bearing date on the 18th day of April, 1863, together with the certificates of acknowledgment thereon endorsed, in the words and figures following, to wit:

(Here insert it; omitted by order of counsel.)

5. A deed from Ephriam M. Frampton and Nanny, his wife; David Frampton and wife and Hiram Frampton and wife, by John Laidley, special commissioner, to Rebecca Everett, bearing date on the 18th day of April, 1863, together with the certificates of acknowledgment and recordation thereon endorsed, in the words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

6th. A deed from Rebecca Everett, Ephriam M. Frampton and wife, Hiram Frampton and wife, by John Laidley, sp'l com'r, to

David Frampton, bearing date on the 18th day of April, 1863, together with the certificates of acknowledgment and recordation thereon endorsed, in the words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

7. The petition of P. H. McCullough, filed in the circuit court of Cabell county on the — day of ——, 1870, with the certificate thereof endorsed thereon by the clerk of said court, in words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

8th. A decree of said circuit court of Cabell county entered on said petition, substituting T. B. Kline as special commissioner in the room and stead of said John Laidley, deceased, in words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

9. A deed made by said T. B. Kline, special commissioner, to A. Laidley, bearing date on the 16th day of June, 1870, together with the certificates of acknowledgment and recordation thereon endorsed, in the words and figures following, to wit:

758 (Here insert it; omitted by order of plaintiff.)

10. A deed made by T. B. Kline, special commissioner, to P. H. McCullough, bearing date on the 23rd day of Nov., 1872, together with the certificates and acknowledgments thereon endorsed, in words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

11. A deed from David Frampton to J. L. Johnson and Wm. L. Johnson, bearing date on the 23rd day of June, 1863, together with the certificates of acknowledgment and recordation thereon endorsed, in words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

12. A deed from Ephriam M. Frampton to Albert Laidley, bearing date on the 22nd day of July, 1870, with the certificates of acknowledgment thereon endorsed, in the words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

And the plaintiff, further to maintain the issue upon his part, proved the following facts, to wit:

1st. By T. W. Peyton, a sworn witness: I am clerk of the circuit court, &c.; omitted by order of plaintiff.

2. By J. L. Thornburg, a sworn witness: In the years 1862, &c.; omitted by order of plaintiff.

3. By J. L. Johnson, a sworn witness: I assisted in making petition, &c.; omitted by order of plaintiff.

J. L. Thornburg recalled and handed plot, &c.; omitted by order of plaintiff.

And the said plaintiff proved that after the land had been sold &c.; omitted by order of plaintiff.

And thereupon the defendant had I. F. Stewart sworn in its behalf, who testified as follows: I knew Isaac Frampton, Jr., &c.; omitted by order of plaintiff.

The above were all the evidence and all the facts introduced by both sides. Thereupon, after argument of counsel for the plaintiff

and defendant, the plaintiff asked the court to give the jury seven instructions in the words and figures following, to wit, 1, 2, 3, 4, 5, 6, & 7.

759 (Plaintiff's instructions Nos. 1, 2, 3, 6, & 7 are omitted by order of plaintiff.)

Plaintiff's instruction No. 4 is in the words and figures following, to wit:

The court instructs the jury that if they find from the evidence that the plaintiff and defendant both claim title to the land in the declaration mentioned from the same source, and that this source is the common grantor, S. H. G. Pennybacker; and if they further find that the defendant so claims title thereto under the deed from C. P. Huntington read in evidence, and that Huntington claimed title under the deed from J. M. Pennybacker and wife, dated February 25th, 1870; and if they further find that at the time of the purported execution of said deed she was a married woman, then the said deed is no deed in law as to the said S. H. G. Pennybacker, and as to her passed no title whatever to Huntington—not even a shadow of color of title, either legal or equitable—and is to be dealt with as if she were no party to it, and the title she then had, if any, remained in her, notwithstanding said deed to Huntington, and she could and did pass her title thereto to John B. Laidley by her deed dated January 26th, 1882.

Plaintiff's instruction No. 5 is in the words and figures following, to wit:

The court instructs the jury that if they believe from the evidence that at the time of the execution of the deed of Feb. 27, 1870, by J. M. Pennybacker and wife to C. P. Huntington Sarah H. G. Pennybacker was a married woman, then said deed to Huntington is absolutely void as to her and passed no title, legal or equitable, to said Huntington, and that Mrs. S. H. G. Pennybacker was as fully vested with the title to the land therein mentioned after said deed was made as before, and had full power thereafter, by deed, to convey the same to whom she pleased, and vest in such purchaser as good title thereto as she had before said deed to Huntington.

760 And the court further instructs the jury that by the deed from Mrs. Sarah H. G. Pennybacker to John B. Laidley of Jan. 26th, 1882, he acquired and became vested with all the title and interest in the land which Mrs. S. H. G. Pennybacker had.

The defendant objected to all and each of said instructions. The court overruled all said objections and gave said seven instructions to the jury; to which rulings and each one thereof the defendant excepted.

The defendant asked the court to give the two following instructions to the jury, marked one & two, in words and figures following, to wit:

Instruction No. 1.

If the jury find from the evidence that C. P. Huntington purchased, paid for, and took possession of the tract of 240 acres in the controversy on the 25th of February, 1870, or any time thereafter,

by virtue of and under claim of the deed of John M. Pennybacker and S. H. G. Pennybacker, dated February 25th, 1870, and that the said C. P. Huntington, after that time and before the institution of this action, conveyed by deed said tract to the defendant, The Central Land Company of West Virginia, who took possession of said tract and had held possession thereof ever since, then the court instructs that by section eight of article eleven of the constitution of the State of West Virginia, adopted by the people thereof in the year 1863, and by section four of chapter 73 of the Code of West Virginia of 1868, which section four was taken from the Code of Virginia of 1860 and was in force in the territory included in the State of West Virginia at the time of the adoption of said constitution, and had received a construction or settled interpretation, before the formation of the State of West Virginia, in the cases of Hairston, etc., *vs.* Randolph, 12 Leigh, 445; Siter, Price & Co. *vs.* McClanachan, 2 Gratton, 280, & Grave *vs.* Zumbro, 14 Gratton, 514, and that under the interpretation given to said section four by the supreme
761 court of appeals in the three decisions aforesaid the said deed of John M. Pennybacker and S. H. G. Pennybacker, dated February 25th, 1870, with the acknowledgments and certificate of recordation attached, was sufficient to pass to C. P. Huntington, at the time of its execution, all the right, title, and interest of every kind whatsoever of said John M. Pennybacker and S. H. G. Pennybacker to said tract of 240 acres, you should find a verdict in the case for the defendant.

Instruction No. 2 in the words and figures following, to wit:

(Here insert it; omitted by order of plaintiff.)

The plaintiff objected to the giving of said instructions and each of them. The court sustained said objections and refused to give said instructions to the jury; to which rulings of the court and each of them the defendant again excepted.

(Thereupon the jury retired to consider, &c.; omitted by order of plaintiff.)

STATE OF WEST VIRGINIA, }
County of Cabell, } *ss*:

I, B. C. Wilson, clerk of the circuit court of Cabell county, do hereby certify that the foregoing is a correct transcript of the papers and proceedings had in the foregoing cause as appears from the records of my office.

Given under my hand this 5th day of February, 1891.

B. C. WILSON,
Clerk C. C. C. C.

Subpœna in Chancery.

UNITED STATES OF AMERICA, } ss:
District of West Virginia, }

The President of the United States of America to the marshal of the district of West Virginia, Greeting:

You are commanded to summon John B. Laidley, citizen of and resident in the State of West Virginia, *be* found in your district, to be and appear in the circuit court of the United
762 States for the district of West Virginia aforesaid, at rules to be held in the clerk's office of said court, at Parkersburg, on the first Monday in December next, to answer a certain bill in chancery now filed and exhibited in said court against him by The Central Land Company of West Virginia, a corporation existing under and by virtue of the laws of West Virginia, citizen of and resident in the State of West Virginia; hereof you are not to fail under the penalty of the law thence ensuing.

And have then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 15th day of November, A. D. 1890, and in the 115 year of the Independence of the United States of America.

Attest: L. B. DELLICKER, *Clerk.*

Memorandum.

The said defendant is required to enter his appearance in this suit in the clerk's office of said court on or before the first Monday of December, 1890; otherwise the said bill may be taken *pro confesso.*

[SEAL.] L. B. DELLICKER, *Clerk.*

Copy.
Teste: —— ——, *Clerk.*

Executed by delivering a true office copy of the within writ to John B. Laidley at the city of Huntington, in the district of West Virginia, November 18, 1890.

H. S. WHITE,
U. S. Marshal,
Per DANIEL WHITE,
Dep'y U. S. Mar.

Marshal's fee, $2.00.

And at the same day, to wit, on the 11th day of November, 1890, the following order was made and entered of record, to wit:

In Chambers.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY. } In Chancery.

763 This 11th day of November, 1890, came the Central Land Company, a corporation, by Simms & Enslow, its attorneys, and presented its bill to the undersigned, judge of the district court of the United States for the district of West Virginia, among other things, praying an injunction against John B. Laidley, enjoining him, his agents, servants, and attorneys, from suing out a writ of possession in the ejectment suit of John B. Laidley *vs.* The Central Land Company of West Virginia, in the circuit court of Cabell county, and from in anywise taking possession of the tract of land set out and described in the plaintiff's bill, known as lot No. 4 in the partition of the estate of Isaac Frampton, Jr., or of any part thereof. On consideration whereof the bill is ordered to be filed and a temporary injunction is allowed, as prayed for, restraining and inhibiting John B. Laidley, his agents, servants, or attorneys, and all others acting for and under him or in interest with him from suing out or obtaining a writ of possession from the clerk of the circuit court of Cabell county in an action of ejectment of John B. Laidley against The Central Land Company of West Virginia for the recovery of the property set out and described in the plaintiff's bill, or from taking possession in anywise of the same or of any portion of the same. No bond is required at this time of complainants, but this cause is set down for hearing upon the motion for a permanent injunction on the 16th day of December, 1890, at the United States court-room, in Parkersburg, West Virginia.

J. J. JACKSON,
Judge D. C. D. U. S., D. W. Va.

Injunction.

In the Circuit Court of the United States for the District of West Virginia. In Chambers.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY. } In Chancery.

764 This 11th day of November, 1890, came the Central Land Company, a corporation, by Simms & Enslow, its attorneys, and presented its bill to the undersigned, judge of the district court of the United States for the district of West Virginia, among other things, praying an injunction ag-inst John B. Laidley, enjoining him, his agents, servants, and attorneys, from suing out a writ of possession in the ejectment suit of John B. Laidley *vs.* The Central Land Company of West Virginia, in the circuit court of Cabell county, and from in anywise taking possession of the tract of land set out and described in the plaintiff's bill, known as lot No. 4 in

the partition of the estate of Isaac Frampton, Jr., or of any part thereof.

On consideration whereof the bill is ordered to be filed and a temporary injunction is allowed, as prayed for, restraining and inhibiting John B. Laidley, his agents, servants, or attorneys, and all others acting for and under him or in interest with him from suing out or obtaining a writ of possession from the clerk of the circuit court of Cabell county in the action of ejectment of John B. Laidley against The Central Land Company of West Virginia, instituted for the recovery of the possession of the property set out and described in the plaintiff's bill, or from taking possession in anywise of the same or of any portion of the same.

No bond is required at this time of complainants, but this cause is set down for hearing upon the motion for a *for a* permanent injunction on the 16th day of December, 1890, at the United States court-room, in Parkersburg, West Virginia.

(Signed) J. J. JACKSON,
Judge D. C. U. S., D. W. Va.

A copy.
Teste: L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

Attest:
[SEAL.] L. B. DELLICKER, *Clerk.*

(Endorsed.)

765 Executed November , 1890, by delivering a certified copy of the within order to John B. Laidley, at Huntington, Nov. 18, 1890, in Cabell county, West Virginia.

H. S. WHITE,
U. S. Marshal.
Per DANIEL WHITE,
Dep'y U. S. Marshal.

Marshal fee, $5.12.

Stipulation.

(Filed Dec. 11th, 1890.)

CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY. } In Ch'y.

It is this day stipulated and agreed by and between the parties to this cause, by their counsel of record, *was* the preliminary injunction heretofore granted by one of the judges of this court shall continue and remain in force and effect until the next regular term of the circuit court of the United States for the district of West Virginia, sitting at Parkersburg.

SIMMS & ENSLOW,
Counsel for Plaintiff.
W. E. CHILTON,
Of Counsel for Defendants.

And at another day, to wit, on the 16th day of Dec., 1890, the following order was made and entered of record, to wit:

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY. } In Chancery.

The parties to this suit having stipulated in writing that the preliminary injunction heretofore awarded in this suit and which was set down for hearing at chambers, in the city of Parkersburg, West Virginia, on the 16th day of December, 1890, which stipulation was signed by counsel both for plaintiff and defendant,
766 should be continued until the next term of the court in course and said preliminary injunction remain in full force and effect until that trial.

It is therefore ordered, in pursuance of said stipulation, that the motion and hearing set down for this day be, and the same is hereby, continued until the 1st day of the next term of this court; and it is further ordered that the injunction awarded in the cause on the 11th day of November, 1890, be, and the same is hereby, continued in full force and effect until the next term of this court.

Done in chambers, in the city of Parkersburg, West Virginia, this the 16th day of December, 1890.

J. J. JACKSON,
Judge D. C. U. S., D. W. Va.

Bond of C. P. Huntington, Special Receiver.

(Filed Jan'y 9th, 1891.)

Know all men by these presents that we, Collis P. Huntington, of the town of Westchester and State of New York, the special receiver of the Central Land Company of West Virginia, as principal, and Darius O. Mills and Benjamin G. Clarke, both of the city and county of New York and State of New York, as sureties, are held and firmly bound unto the United States of America in the penal sum of two hundred thousand ($200,000.00) dollars; for the payment of which we, jointly and severally, bind ourselves, our heirs, executors, and assigns.

Sealed with our seals and dated this seventh day of January, 1891.

The condition of the above obligation is such that whereas said Collis P. Huntington was on the 16th day of December, 1890, appointed a special receiver for the Central Land Company of West Virginia, a corporation created by and existing under the laws of the State of West Virginia, by the Honorable John J. Jackson, judge of the district court of the United States for the district of West Virginia, and as such one of the judges of the circuit court of the United States for said district, in a certain chancery cause of C. P. Huntington and others *vs.* The Central Land Company of
767 West Virginia, and having empowered and directed the said Collis P. Huntington to take possession of all the property,

real and personal, and assets of said Central Land Company as prayed for in the bill heretofore filed in this cause, and to make report of his proceedings to the circuit court of the United States for the district of West Virginia, sitting at Parkersburg, from time to time, as required by said order appointing him as such receiver:

Now, therefore, if the said Collis P. Huntington, as such receiver, shall well and truly perform the duties required of him by said decree and account for and pay over all monies which may come into his hands under and by virtue of said decree and shall faithfully comply with all the orders of the court made and to be made in reference to the handling, disposition, and control of the bonds, stocks, certificates, evidence of debt and property that may come into his hands as such receiver, then the above obligation to be void; otherwise to remain in full force and virtue.

C. P. HUNTINGTON. [SEAL.]
D. O. MILLS. [SEAL.]
B. G. CLARK. [SEAL.]

Signed, sealed, and acknowledged before me this 7th day of January, 1891.

W. J. WALLACE,
Circuit Judge.

Approved by—

J. J. JACKSON,
U. S. Dist. Judge.

Jan'y 13, 1890.

United States Circuit Court, District of West Virginia.

C. P. HUNTINGTON ET ALS.
vs.
CENTRAL LAND CO. OF WEST VIRGINIA.

768 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Collis P. Huntington, being duly sworn, deposed and says that he is the principal on the bond executed this day in the above-entitled cause; that he is worth five hundred thousand dollars over and above all his debts and obligations and exclusive of property exempt by law from levy and sale under an execution.

C. P. HUNTINGTON.

Sworn to before me this 7th day of January, 1891.

W. J. WALLACE,
Circuit Judge.

United States Circuit Court, District of West Virginia.

C. P. HUNTINGTON ET ALS.
vs.
CENTRAL LAND CO. OF WEST VIRGINIA.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Darius O. Mills, being duly sworn, deposed and says that he is surety on the bond executed this day in the above-entitled cause; that he is worth four hundred thousand dollars over and above all his debts and obligations and exclusive of property exempt by law from levy and sale under an execution.

D. O. MILLS.

Sworn to before me this 7th day of January, 1891.

W. J. WALLACE,
Circuit Judge.

United States Circuit Court, District of West Virginia.

C. P. HUNTINGTON ET ALS.
vs.
CENTRAL LAND CO. OF WEST VIRGINIA.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

769 Benjamin G. Clark, being duly sworn, deposes and says that he is surety on the bond executed this day in the above-entitled cause; that he is worth four hundred thousand dollars over and above all his debts and obligations and exclusive of property exempt by law from levy and sale under an execution.

B. G. CLARK.

Sworn to before me this 7th day of January, 1891.

W. J. WALLACE,
Circuit Judge.

And at another day, to wit, on the 6th day of Feb'y, 1891, the following order was made and entered of record, to wit:

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY. } In Equity.

The defendant this day tendered his demurrer to the plaintiff's bill, which is ordered to be filed; the same is set down for argument.

Demurrer of John B. Laidley.

(Filed Feb'y 6th, 1891.)

In the Circuit Court of the United States for the District of West Virginia.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA, a Corporation, Plaintiff,
vs.
JOHN B. LAIDLEY, Defendant.
} In Equity.

The demurrer of John B. Laidley to the bill of complaint of the Central Land Company of West Virginia, a corporation, filed in the circuit court of the United States for the district of West Virginia.

The defendant by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true in manner and form as the plaintiff hath
770 alleged, demurs to the said bill and for cause *and* demurrer says:

First. It appears by the plaintiff's allegations that on the 12th day of September, 1890, the defendant recovered a judgment in a certain action of ejectment in a State court, to wit, in the circuit court of Cabell county and State of West Virginia, against the plaintiff for an estate in fee-simple in the tract of two hundred and forty (240) acres of land, of which the plaintiff is in possession, situate in said county and fully described in the bill and exhibits, and it appears from the allegations of the bill that the defendant is about to sue out of the clerk's office of said State court a writ of possession for the purpose of carrying into effect the judgment aforesaid, and yet, contrary to the statute in such case made and provided, to wit, the act prohibiting a Federal court from injoining *and* suit or proceeding pending in any State court, the plaintiff prays that this defendant may be perpetually enjoined by the process of this honorable court from carrying into effect the judgment of the said State court and from sueing out his writ of possession on said judgment, and from interfering with the plaintiff's possession of said land.

Second. And for further cause of demurrer to the said bill defendant says that the plaintiff's allegations show no equity to enjoin a judgment at law. On the contrary, the allegations and exhibits filed with the bill show that the petition for a writ of error was the plain legal remedy for the injury complained of.

The plaintiff exhibits with its bill a copy of the record of the judgment in ejectment, which it asks this court to enjoin, from which it appears that at the final trial of said action of ejectment the plaintiff moved the court to give to the jury a written instruction to the effect following, viz:

That the deed from John M. and S. H. G. Pennybacker to C. P.

Huntington, bearing date February 25th, 1870, under which the plaintiff claims, was a valid conveyance of the estate of said S. H. G. Pennybacker, and that the decision of the supreme court of appeals of the State of West Virginia, rendered on the 26th day of November, 1887, in said action of ejectment on writ of error, and
771 declaring said deed void as to said S. H. G. Pennybacker, was itself null and void on the grounds that it impairs the obligation of contracts.

And it appears from the said exhibits that the State court refused said instructions and rendered judgment against complainant on the verdict of the jury, and that the plaintiff obtained a suspension of said judgment for sixty days, with intent to petition the supreme court of appeals of the State of West Virginia for a writ of error, the plain legal remedy a-d the one first actually resorted to by the plaintiff, The Central Land Company of W. Va., to reverse the judgment complained of in the bill.

Third. And for further cause of demurrer the defendant says that the plaintiff's allegations impeach the decision of the supreme court of appeals of the State of West Virginia rendered on the 26th day of November, 1887, on writ of error, in the progress of the action of ejectment described in the bill; which decision declares void the deed of John M. and S. H. G. Pennybacker to C. P. Huntington, dated the 25th day of February, 1870, and under which the plaintiff claims, as far as it purports to convey the estate of S. H. G. Pennybacker in the land in controversy, on the grounds that said decision impairs the obligation of contracts and divests the vested rights of the plaintiff acquired under said deed, in this, as the plaintiff avers, that as the law of the State of West Virginia stood at the date of said deed the same was a valid contract, according to the West Virginia State constitution, State statute, and State judicial construction of the same, and that the subsequent decision aforesaid is a violation of said constitution and statute, and repugnant to the prior judicial interpretation thereof, and consequently is a sort of judicial legislation, invading the plaintiff's rights acquired under the deed aforesaid, and is therefore in violation of the Constitution of the United States.

Yet defendant says that on comparing said decision with said State constitution and prior decision the same appears not inconsistent, but a just and natural construction, and in harmony with the former decisions, and could by no possibility operate to
772 divest vested rights or impair the obligation of contracts.

Fourth. And for further cause of demurrer defendant says that it appears from the record of the judgment in ejectment exhibited with the bill that on the 5th day of September, 1889, in the county of Summers, State of West Virginia, in the pregress of said action and before judgment, and when said action was called for trial in the circuit court of said county of Summers (to which court it had been removed for trial, but afterward was remanded to Cabell county), the plaintiff and defendant made and entered of record in said action a solemn agreement to the effect following—that is to say:

After reciting that there was then pending in the supreme court of appeals of the State of West Virginia a certain suit in chancery, an appeal from a decree of the said circuit court of Summers county, in which the complainant, The Central Land Company of West Virginia, was plaintiff and appellan*y* and the defendant, J. B. Laidley, was defendant and appellee, in which suit the prayer of *of* complainant's bill was for a cancellation of the deed, dated January 26th, 1882, from S. H. G. Pennybacker to this defendant, J. B. Laidley, conveying to him the land in controversy, and also for a perpetual injunction to the said action of ejectment.

And, as appears by the record of said suit then produced in court, it was agreed in open court between the plaintiff and this defendant, and entered of record at the special instance of the plaintiff, that the said action of ejectment should be stayed until the decision of said appeal, upon condition that said action of ejectment should abide the event of said chancery suit—that is to say, if the decision of the supreme court of appeals in said suit should be in favor of this defendant, then judgment in said action of ejectment should be immediately rendered in favor of this defendant without further defense or delay.

And it appears from the record of said action of ejectment exhibited with plaintiff's bill that on the 11th day of February, 1889, the said supreme court of appeals of the State of West Virginia decided said chancery suit in favor of this defendant and
773 denied the prayer of the plaintiff's bill for a rescission of the deed aforesaid, and for a perpetual injunction to said action of ejectment, and dismissed the bill.

And afterward a judgment was rendered in said action of ejectment, to wit, on the 12th day of September, 1890, in favor of this defendant, as the plaintiff hath alleged.

The defendant now says that the decision last aforesaid and the agreement of record aforesaid and the judgment in ejectment aforesaid was a final arbitrament and determination of said action of ejectment, with right to execute the same by writ of possession thereon, and the same operates as an estoppel against the plaintiff to allege any matters inconsistent with said records and the said agreement and from again controverting identically the same matter so adjudicated.

And so he s*ya*s the plaintiff's own exhibits estop*p* it from appealing to this court for an injunction to the writ of possession on said judgment upon the allegations of the bill and the said exhibits.

Fifth. And the defendant for further cause of demurrer says that the exhibits filed with the bill show that the charge of fraud in the procurement of the deed from S. H. G. Pennybacker to this defendant for the land in controversy, dated January 26th, 1882, has been fully adjudicated by a decree of the supreme court of appeals of the State of West Virginia, rendered on the 11th day of February, 1889, in favor of defendant, in a suit between the plaintiff and this defendant.

And so he s*ya*s that the plaintiff is now estopped to allege any

matter inconsistent with said record and from again controverting the matter so adjudicated.

Sixth. And for further cause of demurrer the defendant says the allegations of the bill show no equity for a cancellation of the deed from S. H. G. Pennybacker to this defendant for the land in controversy, dated January 26th, 1882.

Seventh. And the plaintiff's allegations show no ground for an injunction to the writ of possession in the bill mentioned.

Eighth. The bill does not show jurisdiction. The parties both are residents of the State of W. Va., and there is no Federal question presented.

774 Ninth. If the bill presents a Federal question, the Exhibit F filed with the bill shows that such question has been adjudicated by a court of competent and concurrent jurisdiction, and, having relied in such defense in the State court, the plaintiff is bound by its choice of tribunals and remedies.

Therefore the defendant prays the judgment of this court whether he shall make any other or further answer to the plaintiff's bill, and that he be hence dismissed with his costs, &c.

JOHN B. LAIDLEY, *Def't.*

JAMES F. BROWN,
CAMPBELL & HOLT,
W. M. CHILTON, *Att'ys.*

UNITED STATES OF AMERICA, *District of West Virginia,* } *To wit:*

This day personally appeared before me, the undersigned commissioner of the United States for the district of West Virginia, John B. Laidley and made oath that the foregoing demurrer is not interposed for delay in the suit in which it is filed.

Given under my hand this 22nd day of January, 1891.

G. F. RATCLIFF,
U. S. Court, Dist. W. Va.

I, John H. Holt, of counsel, practicing in the United States circuit court for the district of West Virginia, do certify that, in my opinion, the foregoing demurrer of John B. Laidley is well founded in point of law.

JOHN H. HOLT.

And on the same day, to wit, on the 6th day of February, 1891, the following order was made and entered of record, to wit:

THE CENTRAL LAND CO. OF WEST VA. *vs.* JOHN B. LAIDLEY. } In Chancery.

775 Upon motion of the plaintiff, it is ordered that the temporary injunction heretofore awarded him against the defendant be, and the same is hereby, continued in full force and effect until the further order of this court.

Plea and Answer of John B. Laidley.

(Filed March 12th, 1892.)

The plea and answer of John B. Laidley to the bill of complaint filed against him in the circuit court of the United States for the district of West Virginia by The Central Land Company of West Virginia.

The defendant, John B. Laidley, by protestation, not confessing any or all of the matters and things alleged in the bill to be true, for plea to such parts of the bill as set up a valid title in the plaintiff to the land in controversy under the deed from S. H. G. Pennybacker to C. P. Huntington saith:

The plaintiff ought not to be heard to allege that on the 25th day of February, 1870, Sarah H. G. Pennybacker and her husband sold the tract of land in the bill mentioned to C. P. Huntington, and executed and delivered to him a good and sufficient deed under the laws as they then stood for said tract, and that the judgment of the circuit court of Cabell county, dated the 12th day of Sept., 1890, in the action of ejectment mentioned in the bill, is in violation of art. 1, sec. 10, of the Constitution of the United States, and therefore inoperative, because he says it is true the defendant, on the 26th day of January, 1882, purchased the land in question from S. H. G. Pennybacker, who was then seized in fee thereof, and that she conveyed the same to him in fee-simple by deed of that date, and it — true that the plaintiff was in actual possession of the same at the time, claiming by purchase and conveyance from C. P. Huntington, who claimed under the deed aforesaid from S. H. G. Pennybacker and her husband, as alleged in the bill; and the defendant says it is true that, to wit, at the March term of the circuit court of Cabell county and State of West Virginia, in the year 1882, he instituted his action of ejectment against the plaintiff, The
776 Central Land Company of West Virginia, to recover possession of said land, and he says that the plaintiff was duly served with a copy of the declaration and notice in said action, and that the plaintiff appeared within the time required by law and plead the general issue to said declaration.

The defendant avers that at the March term, 1884, the said circuit court rendered judgment against him in said action, but on the 23rd day of October, 1886, the supreme court of appeals of the State of West Virginia granted him a writ of error to said judgment, and on the 26th day of November, 1887, reversed the said judgment and awarded a new trial, declaring said deed from Mrs. S. H. G. Pennybacker to C. P. Huntington void as to her; and he avers that, to wit, on the 12th day of September, A. D. 1890, he recovered judgment in said action on the verdict of the jury against the plaintiff for a fee-simple estate in the land and for the possession thereof, and a writ of possession was awarded him in said judgment, and said judgment remains unreversed, in full force and effect. A copy

of the record thereof is herewith exhibited as part of this plea, marked Exhibit (A).

And the defendant avers that in said action the said Central Land Company, in order to maintain the issue on its part, read in evidence the above-mentioned deed from S. H. G. Pennybacker and husband to C. P. Huntington, dated the 25th day of February, 1890; also a deed from Huntington to itself, and moved the court to instruct the jury to the effect that the said deed to C. P. Huntington was a valid deed and did convey the fee-simple estate in said land, notwithstanding the decision of the supreme court of appeals of the State of West Virginia rendered in said action on writ of error on the 26th day of November, 1887, declaring said deed void because the decision was in violation of said art. 1, sec. 10, of the Constitution of the United States, providing that no State shall pass any law violating the obligation of contracts; but the court overruled said motion and refused to give such instruction. On the contrary, the court instructed the jury to the effect that said deed was void so far as it purported to convey the interest of S. H. G. Pennybacker, and that it did not convey any right or interest she had in
777 said land.

And the defendant avers that the plaintiff is estopped by said judgment to again allege, as it hath done in its bill here, that the said deed was a good and sufficient deed to convey to C. P. Huntington the estate of S. H. G. Pennybacker in said land, and pleads and relies on said estoppel as a bar to the allegations of the bill wherein the plaintiff again asserts title under said deed.

And for plea to such parts of the bill as set up and charges fraud in the procurement of the deed executed by Sarah H. G. Pennybacker to J. B. Laidley, bearing date the 26th day of July, 1882, for the land in controversy, the defendant saith that, to wit, on the — day of March, 1887, the plaintiff, The Central Land Company of West Virginia, instituted its suit in chancery in the circuit court of Cabell county, West Virginia, against the defendant and others, and exhibited its bill in said court in said suit wherein the plaintiff alleged that it derived its title to the land in controversy by deed from C. P. Huntington, and that C. P. Huntington derived title thereto by deed from Sarah H. G. Pennybacker and her husband, dated February 25th, 1870, the same deed under which it claims title in its bill in this suit, and wherein the plaintiff alleged, as it hath alleged in its bill here, that the deed from S. H. G. Pennybacker to this defendant for the land in controversy, dated the 26th day of January, 1882, was procured by this defendant by false and fraudulent representations and for a grossly inadequate price.

And the plaintiff alleged in said bill, as it hath done in its present bill, the institution in March, 1882, by this defendant of an action in ejectment in the circuit court of Cabell county, State of West Virginia, against it, the said Central Land Company of West Virginia, for the recovery of the possession of said land, and alleged the pendency of said action, and the plaintiff prayed in its said bill, as it hath done in this, for a cancellation of the deed aforesaid from Sarah H. G. Pennybacker to him for said land, dated January

26th, 1882, and for a perpetual injunction to said action of ejectment.

This defendant, on the — day of ——, 18—, filed his answer to said bill in said circuit court of Cabell county, wherein he
778 denied fully all the allegations of the bill showing fraud in the procurement of said deed; to which answer the plaintiff replied generally, and depositions were taken and filed in said suit, and on the — day of Sept., 1888, the circuit court of Summers county, West Virginia, to which court said suit had been removed for trial, rendered judgment in favor of this defendant on said bill, answer, depositions, and former order, and dismissed said bill with costs against the plaintiff. Said decree remains in full force, unreserved or set aside. A copy of the record of said suit in chancery is here filed as part of this plea, marked Exhibit (B). And the defendant avers that by the said decree the plaintiff is estopped to again allege the same matters and things in support of its charge of fraud in the procurement of said title deed, and he pleads and relies on said estoppel in bar of this suit.

And the defendant, not waiving his pleas to the plaintiff's bill, but still insisting on the same, for answer to the allegations of fraud contained in said bill says: The deed dated February 25th, 1870, under which C. P. Huntington claimed the land in question, though void as to S. H. G. Pennybacker, was valid as to Jno. M. Pennybacker, who, as the husband of Sarah H. G. Pennybacker, was entitled by marital right to his life estate in the land, but his life estate terminated on the 5th day of July, 1881, by the death of Jno. M. Pennybacker, and thereupon the widow became entitled to the possession. Shortly after the death of the husband the defendant informed Mrs. Pennybacker of the defect in her deed to C. P. Huntington, and advised her that she could recover the land, and offered to recover it for her for one-half. Her answer was that the Central Land Company was a wealthy corporation; that she was poor and unable to law the company, but offered to sell out to defendant for $500. The defendant accepted the offer, received and recorded his deed, and instituted the action of ejectment mentioned in the bill. The defendant says he was guilty of no fraud in the transaction; that, the deed made by Mrs. Pennybacker being absolutely void, she had the legal and equitable right to the land, which includes the right to sell and convey, though in the adverse possession of another, under the statutes of West Virginia, and the defendant had the right to buy with full knowledge of the facts.
779 The defendant had only such knowledge of the title to the land as he derived from the public records of the county and the information of Mrs. Pennybacker. The defendant never made any false representation of any matter of law or fact to Mrs. Pennybacker; never concealed any matter of law or fact from her about her title, but made full disclosures of all within his knowledge affecting her claim to the land. The defendant never told Mrs. Pennybacker that she had dower in the land, or dower under the new constitution, or anything to that effect; never made her promise on the honor of a lady not to consult a lawyer, but advised her

to take advise and inform herself fully, and she fully understood the nature of the transaction when she executed the deed. She never refused to bring suit for the land, but after consultation for several weeks, with whom defendant does not know, she decided to sell out and did so.

And, having fully answered the charges of fraud in the bill, the defendant prays judgment upon his pleas herein set up, and that he be dismissed with his costs, &c.

JOHN B. LAIDLEY, *Defendant.*

J. F. BROWN,
CAMPBELL & HOLT, *Att'ys.*

I, John H. Holt, of counsel, practicing in the United States circuit court for the district of West Virginia, do certify that in my opinion the foregoing pleas of John B. Laidley are well founded in point of law.

JOHN H. HOLT.

UNITED STATES OF AMERICA, *District of West Virginia,* } *To wit:*

This day personally appeared before me, the undersigned commissioner for the district of West Virginia, John B. Laidley, and made oath that the foregoing pleas are not interposed for
780 delay in the suit in which they are filed, and that the same are true in point of fact.

Given under my hand this 9th day of March, 1892.

GEO. F. RATCLIFF,
U. S. Commissioner, Dist. West Virginia.

And at another day, to wit, on the 2nd day of April, 1892, the following order was made and entered of record, to wit:

CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY. } In Equity.

This day came John B. Laidley and tendered his plea and answer to the bill of complaint filed herein against him by the Central Land Company of West Virginia; which plea and answer, being inspected by the court, is ordered to be filed.

And at another day, to wit, on the 27th day of February, 1896, the following order was made and entered of record, to wit:

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY and Others. } In Equity.

On motion of the defendants, by counsel, it is ordered that the plaintiff may have not longer than sixty days to file exceptions to reply or set for argument the plea and answer in this cause.

And at another day, to wit, on the 24th day of April, 1896, the following order was made and entered of record, to wit:

THE CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY ET AL. } In Equity.

781 On motion of the defendant- and for reasons appearing to the court, the time in which the plaintiff was to file its exceptions or replication to the defendants' answer is extended until the further order of this court.

And at another day, to wit, on the 16th day of June, 1896, the following order was made and entered of record, to wit:

CENTRAL LAND COMPANY OF WEST VIRGINIA
vs.
JOHN B. LAIDLEY & Others. } In Equity.

By agreement of parties, this case is set down for hearing at Charleston on November 24th, 1896.

782 And at another day, to wit, on the 25th day of June, 1898, the following order was made and entered of record, to wit:

United States Circuit Court for the District of West Virginia.

THE CENTRAL LAND COMPANY OF WEST VIRGINIA,
Complainant,
vs.
JOHN B. LAIDLEY ET ALS., Defendants. } In Equity.

This cause having come on this 25th day of June, 1898, to be considered by this court upon a petition filed by the complainant herein on the 17th day of December, 1897, praying that a rule be issued requiring that John B. Laidley, one of the defendants herein, and his attorneys, Z. T. Vinson and W. R. Thompson, should appear and show cause why they should not be fined and attached for contempt for violating the injunction order heretofore entered in the above-entitled cause, and upon the answer and exhibits attached thereto of the said defendant, John B. Laidley, to said petition, and upon the answers and exhibits attached thereto of his attorneys, Z. T. Vinson and W. R. Thom*spon*, thereto, and upon the bill, answers, and replications to said answers, and the court having considered the matter and having duly examined the bill herein and the answers of the defendants and the exhibits attached thereto, and the records in the ejectment suits in the circuit court of Cabell county, in which John B. Laidley was plaintiff and The Central Land Company of West Virginia and others were defendants, and the record in the chancery cause in the circuit court of Cabell county, in which The Central Land Company of West Virginia was plaintiff and John B. Laidley and others were defendants, which said records in said State court actions were not disputed or denied

by the complainant, and it appearing *for* such examination to the satisfaction of this court, upon consideration thereof, that this suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of this court because of the pendency in the State court prior to the commencement of this suit of the action of ejectment in which John B. Laidley was plaintiff and

The Central Land Company of West Virginia was defend-
783 ant, which was begun in the circuit court of Cabell county, West Virginia, on the first Monday of April, 1882, and of the *p*ther actions in ejectment brought in said State court by the said John B. Laidley, as plaintiff, in relation to the property in question in this suit prior to the commencement of this cause, and of the chancery cause in said State court in which The Central Land Company of West Virginia was plaintiff and John B. Laidley and others were defendants, which was brought in said State court prior to the commencement of this cause—

And this court being therefore, for the aforesaid reason, of the opinion that it is required to dismiss this suit by the 5th section of the act of Congress approved March 3rd, 1875, and entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," it is now, therefore, on this court's own motion, adjudged and decreed that this suit and the bill therein be, and they hereby are, dismissed and stricken from the docket of this court without costs.

784 C. P. HUNTINGTON and Others
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Equity.

Bill of Complaint.

(Filed November 11, 1890.)

The bill of complaint of Collis P. Huntington, A. A. Low, Josiah O. Low, Edward H. R. Lyman, Richard Irwin, sole survivors, doing business as Richard Irwin & Co., and Isaac E. Gates, filed in the circuit court of the United States for the district of West Virginia against the Central Land Company of West Virginia, a corporation existing under and by virtue of the laws of West Virginia.

Your complainants, complaining, say that the said C. P. Huntington is the owner of six hundred and ninety-five shares of stock in said Central Land Co.; the said A. A. Low owns one hundred and sixty shares; the said Josiah O. Low owns one hundred and twenty shares; the said E. H. R. Lyman own- one hundred and twenty shares; the said Richard Irwin owns one hundred and eighty-three, and the said Isaac E. Gates own- six hundred shares, and that your complainants own more than one-third in interest of all the stock of the said Central Land Company of West Virginia, and that all of your complainants are citizens of the State of New

York except Isaac E. Gates, who is a citizen of the State of New Jersey, and that the said Central Land Company of West Virginia is a citizen of West Virginia.

Your complainants say that as the charter of said company expires on the 18th day of May, 1891, they are desirous of having the business of said company wound up and settled, the property sold, and the proceeds divided among the stockholders of said company; and for the purpose they pray that the court may appoint a receiver to take possession of all the property of said company in the State of West Virginia, which consists principally of land and lots in the city of Huntington, Cabell county, West Virginia; Hurricane, Putnam Co.; St. Albans, Kanawha Co., & Hinton, Summers county, West Virginia, and that the same may be sold under the direction of the court, and that the proceeds may
785 be divided among all the stockholders as their interest may appear, & that the said corporation may be dissolved and its business be fully and finally settled up, and thus they will ever pray.

COLLIS P. HUNTINGTON,
A. A. LOW,
JOSIAH O. LOW,
EDWARD H. R. LYMAN,
RICHARD IRWIN,
ISAAC E. GATES,
By COUNSEL.

JACKSON & YATON,
SIMMS & ENSLOW, *Sols.*

Subpœna in Chancery.

UNITED STATES OF AMERICA, *District of West Virginia*, } *ss:*

The President of the United States of America to the marshal of the district of West Virginia, Greeting:

You are commanded to summon the Central Land Company of West Virginia, a corporation existing under and by virtue of the laws of West Virginia, citizen of and resident in the State of West Virginia, — be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at rules to be held in the clerk's office of said court, at Parkersburg, on the first Monday in December next, to answer a certain bill in chancery now filed *filed* and exhib-ted in said court against it by Collis P. Huntington, A. A. Low, Josiah O. Low, Edward H. R. Lyman, Richard Irwin, sole survivors doing business as Richard Irwin & Co., citizens of the State of New York, and Isaac E. Gates, citizen and resident of the State of New Jersey. Hereof you are not to fail under the penalty of the law thence ensuing.

And have then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, this 15th day of November, A. D. 1890, and the 115 year of the Independence of the United States of America.

Attest:

[SEAL.] L. B. DELLICKER, *Clerk.*

786 *Memorandum.*

The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday in December, 1890; otherwise the said bill may be taken *pro confesso.*

L. B. DELLICKER, *Clerk.*

Copy.
Teste: —— ——, *Clerk.*

(Endorsed.)

Executed the within writ November 18th, 1890, by delivering a true office copy thereof to B. W. Foster, general superintendent and agent of the Central Land Company of West Virginia, at Huntington, Cabell county, West Virginia, the said Foster being a resident of Cabell county, and this service made on him at the office of the said company in said county, there being no other officers of the company in or residing in the district of West Virginia on whom process could be served.

November 18, 1890.

H. S. WHITE,
U. S. Marshal,
By DANIEL WHITE,
Dept. U. S. Marshal.

Marsh. fee, $2.00.

And at the same day, to wit, on the 11th day of November, 1890, the following order was made and entered of record, to wit:

In Chambers, in Vacation.

COLLIS P. HUNTINGTON and Others
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Chancery.

Upon this 11th day of November, 1890, came Collis P. Huntington, A. A. Low, Josiah A. Low, Edward H. R. Lyman, Richard Irwin, and Isaac E. Gates, stockholders of the Central Land Company, a corporation, by Jackson & Yaton and Simms & Enslow, their attorneys, and presented their bill to the undersigned, judge of the district court of the United States in and for the district of West Virginia, praying, among other things, the appointment of a receiver to take possession of the property of the said Central

787 Land Company of West Virginia in the State of West Virginia, as set out and described in the plaintiffs' bill. Upon consideration whereof the bill is ordered to be filed, and Frank B.

Enslow is hereby appointed a temporary receiver to take and hold possession of the property described in the plaintiffs' bill until the further order of the court; and this cause is set down for hearing for the appointment of a permanent receiver on the 16th day of December, 1890, at the United States court-room, in Parkersburg, West Virginia. No bond is at this time required of the temporary receiver, inasmuch as all the property asked to be placed in the hands of a receiver at the time is real estate.

J. J. JACKSON,
Judge D. C. U. S., D. W. Va.

Nov. 11, 1890.

Injunction.

In the Circuit Court of the United States for the District of West Virginia, in Chambers, in Vacation.

COLLIS P. HUNTINGTON and Others
vs.
THE CENTRAL LAND COMPANY OF WEST VA. } In Chancery.

Upon this 11th day of November, 1890, came Collis P. Huntington, A. A. Low, Josiah A. Low, Edward H. R. Lyman, Richard Irwin, and Isaac E. Gates, stockholders of the Central Land Company, a corporation, by Jackson & Yeaton and Simms & Enslow, their attorneys, and presented their bill to the undersigned, judge of the district court of the United States in and for the district of West Virginia, praying, among other things, the appointment of a receiver to take possession of the property of the said The Central Land Company of West Virginia in the State of West Virginia as set out and described in the plaintiffs' bill.

Upon consideration whereof the bill is ordered to be filed, and Frank B. Enslow is hereby appointed a temporary receiver to take and hold possession of the property described in the plaintiffs' bill until the further order of the court; and this cause is set
788 down for hearing for the appointment of a permanent receiver on the 16th day of December, 1890, at the United States court-room, in Parkersburg, West Virginia. No bond is at this time required of the temporary receiver, inasmuch as all the property asked to be placed in the hands of a receiver at this time is real estate.

(Signed) J. J. JACKSON,
Judge D. C. U. S., D. W. Va.

Nov. 11th, 1890.

A copy.
Teste:
[SEAL.] L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

Attest: —— ——, *Clerk.*

(Endorsed.)

I executed the within order by serving a certified copy thereof on B. W. Foster, general superintendent and agent of the Central Land Company, November 18th, 1890, by delivering the same to him for said company, he, the said B. W. Foster, being a resident of the city of Huntington, Cabell county, West Va., at the time of service, and service made at the office of the company, no other officer of the company residing or being in the district of West Va.

H. S. WHITE,
U. S. Marshal,
Per DANIEL WHITE,
Dep-ty U. S. Marshal.

Marsh. fee, $2.00.

And at another day, to wit, on the 16th day of December, 1890, the following order was made and entered of record, to wit:

C. P. HUNTINGTON ET ALS.
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Chancery.

This day this cause came on before the Honorable John J. Jackson, judge of the district court of the United States for the district of West Virginia, and as such one of the judges of the circuit court of the United States for the said district of West Virginia, in
789 vacation, in chambers, at the United States court-rooms, in Parkersburg, West Va., for hearing upon the application of C. P. Huntington, A. A. Low, Josiah A. Low, Richard Irwin, Edward H. R. Lyman, and Isaac E. Gates, plaintiffs, against The Central Land Company, for the appointment of a receiver to take possession of the property of the said company, as prayed for in their bill heretofore filed, and this being the day set for the hearing of said application, and it appearing from affidavit filed that notice of the time and place of such application had been mailed to all of the stockholders of the company, and from the receipts for such notices and the acceptance of service, which are here filed, all the stockholders had had due notice of the time and place of making such application for a permanent receiver, and it appearing to the undersigned judge that the process issued in the cause has been duly served upon the defendant, The Central Land Company of West Virginia, and the said defendant, The Central Land Company of West Virginia, now appearing hereto, by B. W. Foster, its general superintendent and agent, and assenting to the entering of this order, and there being no objection to such application on the part of any stockholder or other party in interest, and the plaintiffs representing more than one-third of all the stock of such company now asking for the appointment of a permanent receiver—

It is ordered that Collis P. Huntington be, and he is hereby, appointed a special receiver of this court, with power, and he is hereby so authorized, empowered, and directed, to take possession of all the property belonging to the Central Land Company of West Virginia,

and especially of the tract of 240 acres of land known as lot No. 4 of the Frampton land, sold by S. H. G. Pennybacker to C. P. Huntington, and by him to the Central Land Company, in the corporate limits of the city of Huntington; and F. B. Enslow, special receiver, having filed his report, showing that on the 12th day of November, 1890, he took possession of all the real estate of said company, including said 240-acres tract, he is directed to deliver same to said Collis P. Huntington, as such receiver, and upon such delivery said special receiver is discharged from further action under the
790 decree of this court of November 11th, 1890, and the defendant, The Central Land Company, its agents and servants, are hereby directed to turn over to Collis P. Huntington all books, papers, and accounts relating to said company, its business and affairs, and to deliver to him all notes, deeds, bonds, securities, evidences of debts, and all property, evidences of property held by said company, and to pay over to said receiver all money and moneys now on hand belonging to said company.

The said receiver is hereby directed to make report to the next term of this court, showing what real estate and other property came to his hands.

But this order is not to take effect until said Collis P. Huntington shall give bond as such receiver in the penalty of two hundred thousand ($200,000.00) dollars, with security to be approved by one of the judges of this court, conditioned for the faithful performance of his trust, and for paying off and accounting for according to law all such money and monies as may come into his hands, and for the faithful compliance with all orders of the court made and to be made in reference to the handling, disposition, and control of the bonds, stocks, certificates, evidences of debt, and property that may come into his hands as such receiver; and it is further ordered that the said C. P. Huntington may execute said bond and give such security before any judge of the United States circuit court for the southern district of New York, which bond is to be approved by one of the judges of this court.

And for the purpose of carrying out the requirements of the said bill and winding up the business of the said defendant corporation, the said receiver is hereby authorized to collect the debts due it by suits or otherwise, and in order to carry into effect the foregoing directions and requirements, and to wind up the business of the said defendant company, said receiver, by himself, his agent, servant, or attorneys, is hereby authorized and empowered to do and perform any and all acts necessary to carry the same into effect, in the same and as full a manner as the said company could do
791 through its officers, agents, and servants; but he shall report annually, unless otherwise ordered, to this court his action hereunder, but the said receiver, under this order, is not to sell or convey any of the real estate of the defendant company until the further order of the court in term time, except that such special receiver is authorized to complete any contracts heretofore made by the said defendant company of any of its real estate, and upon the payment to him of the purchase-money and the execution of any

notes for the deferred payments according to the contract of sale, then said special receiver is hereby authorized and empowered for and on behalf of the said company to execute fit and proper deed for said land or lots so sold, conveying all interest of the said company to said purchasers, as provided for in their contracts of purchase.

(Signed) J. J. JACKSON,
Judge D. C. U. S., D. W. Va.

Dec. 16th, 1890.

Attest: L. B. DELLICKER, *Clerk.*

Report of F. B. Enslow, Special Receiver.

(Filed Dec. 16, 1890.)

COLLIS P. HUNTINGTON ET ALS.
vs.
THE CENTRAL LAND COMPANY. } In Chancery.

In chambers at Parkersburg, West Virginia.

To the honorable the judge of the circuit court of the United States for the district of West Virginia:

The undersigned, special receiver, appointed in the above cause on the 11th day of November, 1890, to take possession of the real estate of the Central Land Company of West Virginia, would respectfully report that on the morning of November the 12th, 1890, he took actual possession of all the real estate owned by the said company in West Virginia, as follows:

All the town lots in the city of Huntington belonging to said company—exact number not known—and all the land lying
792 in the said corporate limits, including the tract of two hundred and forty acres (240) known as the Pennybacker tract, claimed by J. B. Laidley and others, and has now actual possession of the same. The land and town lots amount to about four thousand acres and an amount for taxation at $500,000.

Also of the following tracts of land:

Thirty-nine acres below Field's creek, in Cabin Creek dist., Kanawha county, valued at $1,950;

The hundred and seventy-seven and one-half acres below Field's creek, in same dist., valued at $3,020.00;

One hundred and forty-nine acres, Kanawha River bottom, in Louden dist, valued at $7,650;

Sixty-eight acres, Kanawha River hill, in Louden dist., valued at $680;

One hundred and fifty-three acres, hill and bottom, in St. Albans, Kanawha county, valued at $10,000;

Sixty-six acres of bottom in St. Albans, valued at $7,650;

One and three-eights acres in St. Albans, valued at $70;

One hundred and thirteen acres, rolling hill, in St. Albans, valued at $5,650;

125 acres at Hurricane, Putnam county, valued at $10,000.00 and now holds the same subject to the order of your honorable court.

Respectfully submitted this the 16th day of December, 1890.

F. B. ENSLOW,
Special Receiver.

And at another day, to wit, on the 6th day of February, 1891, the following order was made and entered of record, to wit:

In the Circuit Court of the United States for the District of West Virginia.

C. P. HUNTINGTON ET AL.
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Chancery.

This day C. P. Huntington, who was, on the 16th day of December, 1890, appointed a special receiver in this cause, in cham-
793 bers, presented here in open court his bond as such receiver, executed by himself, with D. O. Mills and B. G. Clark as his sureties, signed, sealed, and acknowledged before Hon. W. J. Wallace, circuit judge, and approved by the Hon. J. J. Jackson, United States district judge, and as such one of the judges of this court, and on his motion the same is ordered to be filed.

And this cause coming on now to be heard upon the papers read at the former hearing, and upon the said bond so executed, approved, and filed as aforesaid, and upon the bill taken *pro confesso* at the January rules, 1891, of this court, *and* was argued by counsel for the complainants.

On consideration whereof, and it appearing to the court that thirty days have elapsed since said bill was taken *pro confesso* by the entry of the order thereon at January rules, 1891, as aforesaid, and the defendant not having entered its appearance, it is adjudged, ordered, and decreed that the appointment of said C. P. Huntington as such special receiver be, and the same is hereby, in all things confirmed, and the powers and duties conferred upon said receiver by the said decree of date December 16th, 1890, are hereby ratified and confirmed.

And it is further adjudged, ordered, and decreed that said special receiver, in addition to the powers and duties so conferred upon him, as aforesaid, be, and he is hereby, authorized, empowered, and directed to make sale of any and all real estate of the defendant, The Central Land Company of West Virginia, in the same manner set out in its former decree appointing him receiver upon such terms as he, the said special receiver, may see fit at either public or private sale for cash or on credit; and upon any sale being made the said C. P. Huntington is hereby authorized and empowered to execute any and all such deeds, conveyances, and assurances as may be necessary to vest the title to said real estate so sold in the purchaser or purchasers and to take from them security for the deferred

payments, either by personal security, vendors' lien, or deed of trust, as may be most expedient, and the execution by the said C. P. Huntington in due form of law of any deed for any real estate belonging to the Central Land Company, as such special receiver, shall be and operate as a transfer of the title to said real
794 estate so conveyed to the grantees in the deed in the same manner as if the deeds had been executed by the said The Central Land Company and pass all title that the Central Land Company may have had in said real estate to the purchaser; and said C. P. Huntington shall, with his reports to this court, report, show, and set out all sales made by him, all deeds executed and moneys received therefor; and in case the said special receiver sells any of said defendant's real estate at public auction, then he shall report such sale to the court for confirmation.

And at another day, to wit, on the 31st day of March, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON ET AL.
vs.
THE CENTRAL LAND CO. OF WEST VIRGINIA ET AL. } In Equity.

This day came John B. Laidley and tendered his petition herein, and the same is ordered to be filed; and it appearing to the court that said petitioner seeks to have the special receiver, C. P. Huntington, discharged as such receiver over the 240-acre Pennybacker tract, more specifically set out in the order appointing said receiver, *and* said Laidley moved the court to discharge said receiver, and the said motion is set down for hearing on the 24th day of June, 1897.

And it is further ordered that a copy of this order and a copy of said petition be served on said receiver within thirty days from this date.

And it is further considered by the court that a service of said copies on Mess. Simms or Enslow, attorneys for said receiver, shall be deemed a service upon said receiver.

Petition of John B. Laidley.

(Filed March 31st, 1897.)

C. P. HUNTINGTON
vs.
CENTRAL LAND CO. } In Equity.

795 *The Petition of John B. Laidley, Filed in the Above-styled Cause.*

To the honorable the judges of the circuit court of the United States for the district of West Virginia:

Your petitioner would respectfully show unto your honor- that by an order entered in the above-styled cause C. P. Huntington

was appointed a special receiver of the Central Land Co., a corporation, and directed to take into his custody all the property belonging to said corporation.

That without the knowledge or acquiescence of your petitioner said receiver has taken into his custody a tract of 240 acres of land known as the Everett or Pennybacker tract, in the city of Huntington, Cabell Co., W. Va., claiming it as land belonging to said Central Land Company, and is justifying his action therein under said order appointing him receiver as aforesaid.

Your petitioner further says that said 240-acre tract known as the Pennybacker tract is not now nor was it at any time the property of the said Central Land Co., and at the time said receiver was appointed the fee-simple title and estate therein was in your petitioner and those claiming under him, which will more fully appear to your honors by copies of the records of the cases of John B. Laidley *vs.* The Central Land Co. *et al.*, in ejectment, and The Central Land Co. *vs.* John B. Laidley *et al.*, in chancery, filed with this petition as part hereof.

Your petitioner further says that he had no notice of the application for the appointment of said receiver, nor was he a party to said suit, and any and all orders entered therein, so far as they effect the title, possession, or custody of said 240-acre tract, are null and void, having been made without your honorable court having jurisdiction either of the property or the owner thereof.

Your petitioner further says that said receiver should be removed or discharged:

1st. Because the court had no jurisdiction to make the appointment.

2nd. Said receiver is not a resident of the State of West Virginia, nor within the jurisdiction of this court. The sureties on his
796 bond as receiver are not residents, nor are they within the jurisdiction of this court.

3rd. The said C. P. Huntington is not a proper party to be appointed in this cause, because he is the party plaintiff in the suit and is a large stockholder in the said land company and is personally interested in withholding from your petitioner the possession of said land and the custody of the rents, issues, and profits thereof.

Your petitioner would therefore pray that said receiver be discharged and that the order appointing said receiver, or so much thereof as pertains to the 240-acre Pennybaker tract, be vacated and set aside, and for such other relief as in equity he is entitled; and he will ever pray.

VINSON & THOMPSON, *Sol.* JOHN B. LAIDLEY.

C. P. HUNTINGTON
vs.
CENTRAL LAND COMPANY. } In Equity.

You will hereby take notice that on the 31st day of March, 1897, at Parkersburg, W. Va., I shall file a petition, a copy of which is

hereto attached, in the above-styled cause pending in the circuit court of the United States for the district of West Virginia, and move the court on that day to discharge you as receiver of the 240-acre Pennybaker tract of land mentioned in the order appointing you receiver of it, property of the Central Land Company.

Very respectfully, JOHN B. LAIDLEY.

VINSON & THOMPSON, *Sols.*

Service accepted to have the same effect, and no other, as if served on us this 27th day of March, 1897, 2.40 p. m.

SIMMS & ENSLOW, *Att'ys.*

797 *Order Served with Foregoing Petition.*

At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in said district, on the 31st day of March, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON ET AL.
vs.
THE CENTRAL LAND CO. OF WEST VIRGINIA ET AL. } In Equity.

This day came John B. Laidley and tendered his petition herein, and the same is ordered to be filed; and it appearing to the court that said petitioner seeks to have the special receiver, C. P. Huntington, discharged as such receiver over the 240-acre Pennybaker tract, more specifically set out in the order appointing said receiver, and said Laidley moved the court to discharge said receiver, *and* the said motion is set down for hearing on the 24th day of June, 1897.

And it is further ordered that a copy of this order and a copy of said petition be served on said receiver within thirty days from this date.

And it is further considered by the court that service of said copies on Mess. Simms or Enslow, attorneys for said receiver, shall be deemed a service upon said receiver.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 31st day of March, 1897, in the equity cause of C. P. Huntington *et al. v.* The Central Land Co. of West Virginia *et al.*, therein pending.

Given under my hand and seal of said court, at Parkersburg, in said district, this 3rd day of April, 1897.

[SEAL.] L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

We acknowledge service of the above-mentioned petition and order this 20th day of April, 1897.

SIMMS & ENSLOW, *Att'ys.*

798 And at another day, to wit, on the 12th day of July, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON ET AL.
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA. } In Chancery.

This day this cause came on to be heard upon the motion of John B. Laidley heretofore made to remove C. P. Huntington as special receiver of the Central Land Company, and, upon argument of counsel, the court is of opinion that the said motion should meet approval.

It is therefore ordered that said motion be, and the same is, overruled.

And at another day, to wit, on the 13th day of July, 1897, the following order was made and entered of record, to wit:

C. P. HUNTINGTON ET ALS.
vs.
THE CENTRAL LAND COMPANY OF WEST VIRGINIA *et al.* } In Equity.

John B. Laidley this day tendered his petition in the above cause, showing that on the 12th day of September, 1890, he recovered a judgment in the circuit court of Cabell county, State of West Virginia, against the Central Land Company of West Virginia, in a certain action of ejectment for the possession of a certain tract of land and for costs of said action, and showing further that a writ of possession was issued thereon, to the execution of which a temporary injunction has been awarded by this court, and that lately and after due notice an execution for costs of said action was issued from the clerk's office of said court, which has not been enjoined. It is ordered, according to the prayer of said petition, that C. P. Huntington, special receiver of said Central Land Company of West Virginia, do pay to John B. Laidley or his assignees, holding cost bills, the costs of said action of ejectment, as taxed by the clerk of the circuit court of said Cabell county, out of any money in his hands to the credit of said receiver.

799 And at the same day, to wit, on the 25th day of June, 1898, the following order was made and entered of record, to wit:

C. P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia, Complainant,
vs.
JOHN B. LAIDLEY ET ALS., Defendants. } In Equity.

This cause having come on this 25th day of June, 1898, to be considered by this court upon a petition filed by the complainant herein on the 17th day of December, 1897, praying that a rule be issued requiring that John B. Laidley, one of the d-fendants herein, and

his attorneys, Z. T. Vinson and W. R. Thompson, should appear and show cause why they should not be fined and attached for contempt for violating the injunction order heretofore entered in the above-entitled cause, and upon the answer and exhibits attached thereto of the said defendant, John B. Laidley, to said petition, and upon the answers and exhibits attached thereto of his attorneys, Z. T. Vinson and W. R. Thompson, thereto, and upon the bill and the answers to said bill, and the court having considered the matter and having duly examined the bill and amended bills herein, and the answers of the defendants and the exhibits attached thereto, and the records in the ejectment suits in the circuit court of Cabell county, in which John B. Laidley was plaintiff and The Central Land Company of West Virginia and others were defendants, and the record in the chancery cause in the circuit court of Cabell county, in which The Central Land Company of West Virginia was plaintiff and John B. Laidley and others were defendants, which said records in said State court actions were not disputed or denied by the complainant, and it appearing from such examination to the satisfaction of this court, upon consideration thereof, that this suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of this court, because of the pendency in the State court prior to the commencement of this suit of the action of ejectment in which John B. Laidley was plaintiff and The Central Land Company of West Virginia was defendant, which was begun in the circuit court of Cabell county,
800 West Virginia, on the first Monday of April, 1882, and of the other actions in ejectment brought in said State court by the said John B. Laidley as plaintiff in relation to the property in question in this suit prior to the commencement of this cause and of the chancery cause in said State court in which The Central Land Company of West Virginia was plaintiff and John B. Laidley and others were defendants, which was brought in said State court prior to the commencement of this cause—

And this court being therefore, for the aforesaid reason, of the opinion that it is required to dismiss this suit by the 5th section of the act of Congress approved March 3rd, 1875, and entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," it is now, therefore, on this court's own motion, adjudged and decreed that this suit and the bills and amended bills therein be, and they hereby are, dismissed and stricken from the docket of this court without costs.

And at the same day, to wit, on the 25th day of June, 1898, the following order was made and entered of record, to wit:

COLLIS P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia,
vs.
JOHN B. LAIDLEY ET AL. } In Equity.

Order Staying Proceedings.

The complainant in the above-entitled cause having this day prayed an appeal to the Supreme Court of the United States from the final decree entered herein on the 25th day of June, 1898, the said appeal having been duly allowed and the said complainant having presented and filed with said appeal an assignment of error, and the citation having been duly signed and a supercedeas bond having been taken, with good and sufficient security, in the sum of $5,000 that the said complainant and appellant shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, now, on motion of Messrs. Simms & Enslow, *sol*icitors for said complainant and appellant, it is—

801 Ordered that all proceedings in this cause be, and they hereby are, stayed pending said appeal, and that the injunction heretofore issued in this cause be, and the same hereby is, continued in full force and effect pending said appeal.

Appeal.

(Filed June 25, 1898.)

United States Circuit Court, District of West Virginia.

COLLIS P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia, Complainant & Appellant,
vs.
JOHN B. LAIDLEY ET ALS., Defendants & Appellees. } In Equity. Appeal.

Collis P. Huntington, as special receiver of the Central Land Company, the complainant above named, conceiving himself aggrieved by the final decree entered herein on the 25th day of June, 1898, dismissing this suit and the bill and amended bills therein, doth hereby appeal from said decree to the Supreme Court of the United States, and he prays that his appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated Parkersburg, W. Va., June 25, 1898.

SIMMS & ENSLOW,
Solicitors for Complainant and Appellant,
Huntington, W. Virginia.

And now, to wit, on June 25, 1898, it is ordered that the appeal be allowed as prayed for.

J. J. JACKSON,
U. S. Dist. Judge.

Petition for Appeal.

(Filed June 25th, 1898.)

802 U. S. Circuit Court, District of West Virginia.

COLLIS P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia,
against
JOHN B. LAIDLEY ET ALS. } In Equity.

To the United States circuit court for the district of West Virginia:

Your petitioner, Collis P. Huntington, as special receiver of the Central Land Company of West Virginia, respectfully represents that he is aggrieved by the final decree entered in this cause on the 25th day of June, 1898, dismissing this suit and the bill and amended bill therein on the ground that this court had no jurisdiction of this cause, notwithstanding that it had the first actual physical possession of the land involved in this suit, because of the pendency in the circuit court of Cabell county of West Virginia, begun prior to the commencement of this cause, of certain actions of ejectment in which John B. Laidley was plaintiff and The Central Land Company of West Virginia and others were defendants, and of the chancery suit in which The Central Land Company of West Virginia was plaintiff and John B. Laidley and others were defendants.

Your petitioner therefore prays an appeal from said final decree of June 25th, 1898, to the Supreme Court of the United States under the 2nd paragraph of section 5 of the act of Congress approved March 3rd, 1891, and entitled "An act to establish circuit courts of appeal and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," and files herewith an assignment of error and prays that his appeal may be allowed and a supercedeas granted, to the end that the said final decree herein of June 25th, 1898, may be reviewed and reversed.

And he further prays that under the first section of the 36 rule of the rules of the Supreme Court an order be entered in this cause staying the proceedings therein and continuing the injunction heretofore issued in this case pending this appeal.

SIMMS & ENSLOW,
803 *Solicitors for Complainant and Petitioner, Huntington, W. Va.*

Assignment of Errors.

(Filed June 25, 1898.)

United States Circuit Court, District of West Virginia.

COLLIS P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia, Complainant,
vs.
JOHN B. LAIDLEY ET ALS., Defendants. } In Equity.

Assignment of error-.

Now comes Collis P. Huntington, as special receiver of the Central Land Company of West Virginia, by his solicitors, Simms & Enslow, and prays an appeal to the Supreme Court of the United States from the final decree entered herein on the 25th day of June, 1898, and says that in the record and proceedings in this cause there is manifest error in this:

That the circuit court erred in entering said final decree upon its own motion upon the ground that it was required to dismiss this cause because it appeared to its satisfaction that this suit did not really and substantially involve a dispute or controversy properly within the jurisdiction of this court, notwithstanding that this court had the first actual physical possession of the land in controversy because of the pendency in the State court prior to the commencement of this suit of the action of ejectment in which John B. Laidley was plaintiff and The Central Land Company of West Virginia was defendant, which was begun in the circuit court of Cabell county, West Virginia, on the first Monday of April, 1882, and of the other actions in ejectment brought in said State court by the said John B. Laidley, as plaintiff, in relation to the property in question in this suit prior to the commencement of this cause and of the chancery cause in said State court in which The Central Land Company of West Virginia was plaintiff and John B. Laidley and others were defendants, which was brought in said State court
804 prior to the commencement of this cause.

Wherefore the said Collis P. Huntington prays that the said decree of this court, dated June 26th, 1898, be reversed, and that this cause be remanded for such further proceedings as equity and justice may require.

SIMMS & ENSLOW,
Solicitors for Complainant and Appellant,
Huntington, W. Virginia.

Certificate of Court.

(Filed June 25, 1898.)

United States Circuit Court, District of West Virginia.

COLLIS P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia, Complainant,
vs.
JOHN B. LAIDLEY ET ALS., Defendants.
} In Equity.

A final decree having been entered herein on the 25th day of June, 1898, dismissing this suit and the bill and amended bills therein:

Now, therefore, this court, in pursuance of the second paragraph of the fifth section of the act of Congress approved March 3rd, 1891, and entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," hereby certifies to the Supreme Court of the United States for decision the question of the jurisdiction alone of this court over this cause as follows:

In this court without jurisdiction of this cause because of the pendency in the State court prior to the commencement of this suit of the action of ejectment in which John B. Laidley was plaintiff and The Central Land Company of West Virginia was de-
805 fendant, which was begun in the circuit court of Cabell county, West Virginia, on the first Monday in April, 1882, and of the other actions in ejectment brought prior to this cause in said State court by the said John B. Laidley, as plaintiff, in relation to the property in question in this suit, and of the chancery cause in which The Central Land Company of West Virginia was complainant and John B. Laidley and others were defendants, which was brought in said State court prior to the commencement of this cause.

J. J. JACKSON,
Judge D. C. U. S., D. W. Va.

Dated June 25th, 1898. June 25, 1898.

Appeal Bond.

(Filed June 25th, 1898.)

806 Know all men by these presents that we, F. B. Enslow, a responsible person, for and on behalf of C. P. Huntington, as special receiver of the Central Land Company of West Virginia, as principal, and B. W. Foster, as surety, both of Huntington, West Virginia, are held and firmly bound unto John B. Laidley, W. S. Laidley, Thomas J. Bryan, James F. Brown, William E. Chilton, Mary E. Chilton, C. W. Campbell, F. L. Doolittle, E. S. Doolittle,

R. A. Goodwin, George F. Donnella, James Prichard, C. E. Gwinn, O. E. Gwinn, W. W. Gwinn, Rufus Switzer, Garland Buffington, Lillie Handley, W. R. Gunn, W. H. H. Holswade, L. D. Isbell, Oscar Jones, Lizzie Montgomery, James K. Oney, Gordon O'Bierne, J. D. Terrell, John T. Wilson, Thomas H. Harvey, and N. Smith in the full and just sum of $5,000.00; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25 day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a circuit court of the United States for the district of West Virginia, in a suit in equity depending in said court between C. P. Huntington, as special receiver of the Central Land Company of West Virginia, complainant, and John B. Laidley and others named herein as the obligees of this bond, defendants, a final decree was rendered against the said C. P. Huntington, as special receiver of said land company, dismissing said suit, and the said C. P. Huntington having appealed from said final decree and his appeal having been allowed, and the said C. P. Huntington having filed a copy thereof, together with an assignment of errors, in the clerk's office of the said court to reverse the final decree in the aforesaid suit, and a citation directed to the said defendants
807 therein, the obligees named in this bond, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 25th day of July next:

Now, the condition of the above obligation is such that if the said C. P. Huntington, as special receiver of the Central Land Company of West Virginia, shall prosecute said appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

This bond is to operate as a supersedeas.

F. B. ENSLOW. [SEAL.]
B. W. FOSTER. [SEAL.]

Sealed and delivered in presence of—

L. B. DELLICKER.
L. B. DELLICKER.

Approved by—

J. J. JACKSON,
U. S. Dist. Judge.

June 25, 1898.

Citation.

808 UNITED STATES OF AMERICA, *ss:*

To John B. Laidley, W. S. Laidley, Thomas J. Bryan, James F. Brown, William E. Chilton, Mary E. Chilton, C. W. Campbell, F. L. Doolittle, E. S. Doolittle, R. A. Goodwin, George F. Donnella, James Prichard, C. E. Gwinn, O. E. Gwinn, W. W. Gwinn, Rufus Switzer, Garland Buffington, Lillie Handley, W. R. Gunn, W. H. H. Holswade, L. D. Isbell, Oscar Jones, Lizzie Montgomery, James K. Oney, Gordon O'Bierne, J. D. Terrell, John T. Wilson, Thomas H. Harvey, and N. Smith, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the 25th day of July next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of West Virginia, wherein C. P. Huntington, as special receiver of the Central Land Company of West Virginia, is appellant and you are appellees, to show cause, if any there be, why the final decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 25th day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

{ Seal Circuit Court United States, District West Virginia, Parkersburg, West Va. }

J. J. JACKSON,
Judge D. C. U. S., D. W. Va.

[Endorsed:] C. P. Huntington, spl. rec'r, *vs.* J. B. Laidley *et al.* In equity. Citation.

809 STATE OF WEST VIRGINIA, *Cabell County,* } *ss:*

I, H. S. King, do solemnly swear that I executed the within citation by delivering to Z. T. Vinson and W. R. Thompson and each of them, attorneys of record for Thomas J. Bryan, James F. Brown, William E. Chilton, Mary E. Chilton, C. W. Campbell, F. L. Doolittle, E. S. Doolittle, R. A. Goodwin, George F. Donnella, James Prichard, C. E. Gwinn, O. E. Gwinn, W. W. Gwinn, Rufus Switzer, Garland Buffington, Lillie Handley, W. R. Gunn, W. H. H. Holeswade, L. D. Isbell, Oscar Jones, Lizzie Montgomery, James K. Oney, Gordon O'Berne, J. D. Terrell, John T. Wilson, Thomas H. Harvey, and N. Smith, a duly certified office copy thereof at the city of Huntington, Cabell county, on July 4th, 1898.

H. S. KING.

Taken, sworn to, and subscribed before me, the undersigned notary public in and for the county and State aforesaid.

R. S. DOUTHAT,
Notary Public.

810 STATE OF WEST VIRGINIA, *Cabell County,* } ss:

I, J. K. Suiter, do solemnly swear that I executed the within citation as to John B. Laidley by delivering to him a duly certified office copy thereof at the city of Huntington, Cabell county, on June 28th, 1898.

J. K. SUITER.

Taken, sworn to, and subscribed before me, the undersigned notary public in and for the county and State aforesaid, this 28th day of June, 1898.

R. S. DOUTHAT,
Notary Public.

Service of the attached citation is hereby accepted this 11th day of July, 1898.

W. E. CHILTON.
MARY E. CHILTON,
By W. E. CHILTON,
Her Attorney.

Service accepted to have same effect only as if served with a copy.

W. S. LAIDLEY.
J. F. BROWN.

July 11, '98.

811 STATE OF WEST VIRGINIA, *Cabell County,* } ss:

I, H. S. King, do solemnly swear that I executed the attached notice by delivering a true copy thereof to W. R. Gunn, at the county of Mason, on the 12th day of July, 1898, and to Thomas J. Bryan, C. W. Campbell, F. L. Doolittle, E. S. Doolittle, R. A. Goodwin, George F. Donnella, W. W. Gwinn, Rufus Switzer, Garland Buffington, Lillie Handley, W. H. H. Holswade, L. D. Isbell, Oscar Jones, James K. Oney, Gordon O'Bieren, John T. Wilson, Thomas H. Harvey, and N. Smith on the 14th day of July, 1898, at the county of Cabell; to C. E. Gwinn, at said county, on the 15th day of July, 1898, and to Lizzie Montgomery, at the county of Fayette, on the 18th day of July, 1898.

H. S. KING.

Taken — sworn to before me, the undersigned notary public in and for the county and State aforesaid, this 20th day of July, 1898.

R. S. DOUTHAT,
Notary Public.

812 UNITED STATES OF AMERICA, *District of West Virginia,* } *To wit:*

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing are true transcripts of so much of the record and proceedings of said court in the equity causes of C. P. Huntington, special receiver, *v.* John B. Laidley *et al.*, The Central Land Company of West Virginia *v.* John B. Laidley, and C. P. Huntington *et al. v.* The Central Land Company of West Virginia, therein pending, as was asked for by the appellant, as the same appear among the records of my said office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Parkersburg, in said district, this 22d day of July, 1898.

{Seal Circuit Court United States, District West Virginia, Parkersburg, West Va.}

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

Endorsed on cover: Case No. 16,934. West Virginia C. C. U. S. Term No., 105. C. P. Huntington, as special receiver of the Central Land Company of West Virginia, appellant, *vs.* John B. Laidley, W. S. Laidley, Thomas J. Bryan, *et al.* Filed July 23d, 1898.

No. 103.

JAN 10 1900

JAMES H. MCKENNEY, Clerk.

Ref. & Recd. & Endorsed for Appt.

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Jan. 10, 1900.

C. P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia,

Appellant,

vs.

JOHN B. LAIDLEY, W. S. LAIDLEY, THOMAS J. BRYAN ET AL.,

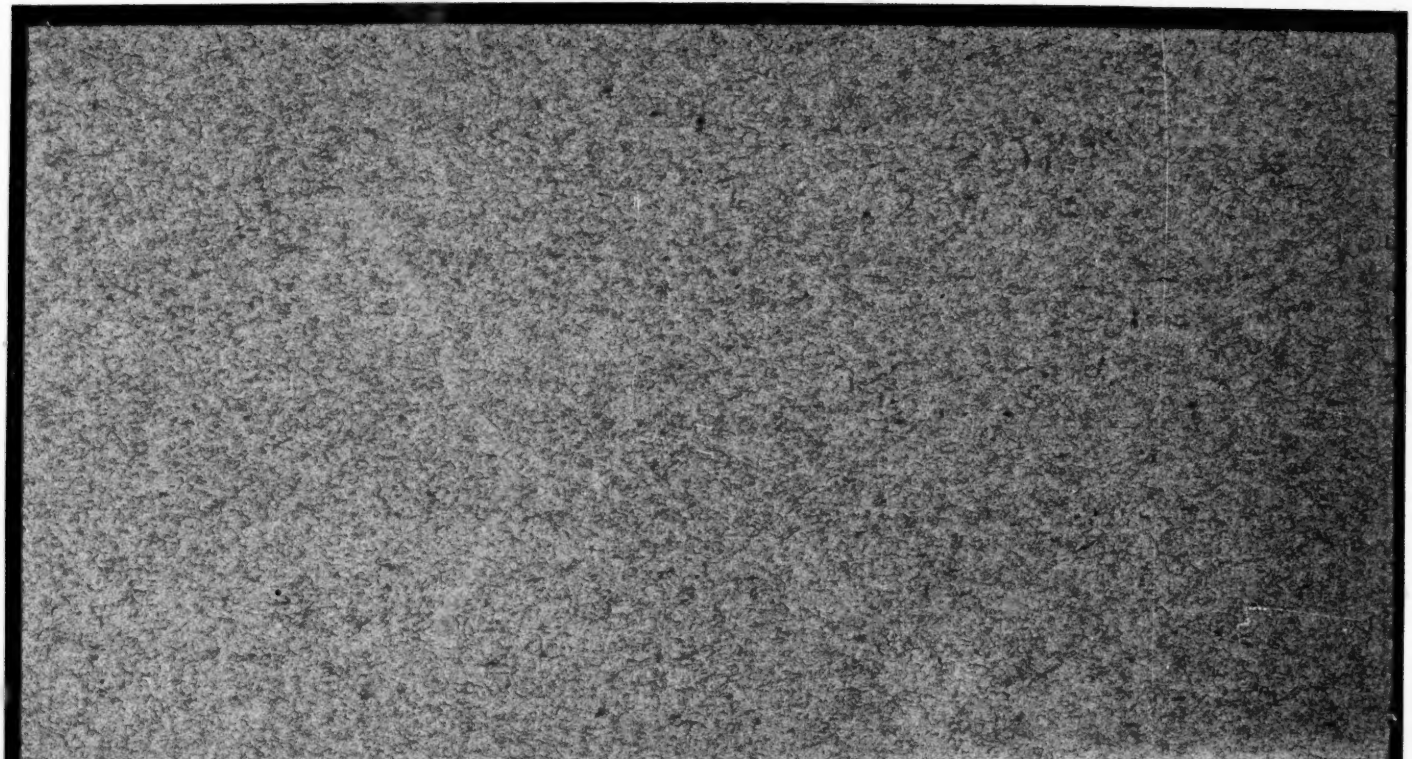
Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

BRIEF FOR APPELLANT.

MAXWELL EVARTS,
P. B. ENSLOW,
Of Counsel for Appellant.

C. G. Burgoyne, Walker and Centre Streets, N. Y.



Supreme Court of the United States.

OCTOBER TERM, 1899. No. 105.

C. P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia,
Appellant,

vs.

JOHN B. LAIDLEY, W. S. LAIDLEY, THOMAS J. BRYAN ET AL.,
Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Statement.

During the year 1870, and for a long time prior thereto, C. P. Huntington, the complainant in this cause, in his individual capacity employed a man by the name of Albert Laidley (father of the defendant John B. Laidley) to acquire for him in the State of West Virginia large tracts of farm and wild land in the vicinity of where the City of Huntington, West Virginia, is now situated. Albert Laidley was a lawyer, and Huntington relied entirely upon him for the examination of the titles to this land and for the preparation

of the deeds therefor, and it was part of the duty of the said Albert Laidley to see that the deeds for such lands were properly executed, and that the proper certificates of acknowledgment were attached thereto. All these matters were left by Huntington in the charge of Albert Laidley, and Huntington relied solely upon the skill and professional training of Laidley in this regard (Record, p. 55).

Some of the tracts of this land were conveyed first by the original vendors to Albert Laidley, and then by Albert Laidley and his wife to Huntington; but the particular tract in question, known as the Pennybacker tract, which consisted of about 240 acres of land now within the corporate limits of the City of Huntington, was conveyed direct to Huntington by the vendor Sarah H. G. Pennybacker and her husband, John M. Pennybacker, by deed dated the 25th day of February, 1870. In the deed, however, dated April 13, 1870, from Albert Laidley and his wife conveying to Huntington the tracts of land acquired by said Laidley this Pennybacker tract of land is specifically referred to and conveyed as follows: "and also his entire interest in a tract of land containing 240 acres, purchased of J. M. Pennybacker and wife by said Laidley and conveyed by his directions to C. P. Huntington, *the title to which the said Laidley covenants to warrant and defend generally*" (Record, p. 75).

On or about the 16th day of October, 1871, Huntington and his wife conveyed the Pennybacker tract together with the other property acquired through Albert Laidley to the Central Land Company of West Virginia (Record, pp. 76, 79).

The Land Company at once improved the property, divided it into lots and sold a part thereof. During this time Mrs. Pennybacker lived in the City of Huntington, and was aware of the improvements upon the property and of its increase in value (Record, p. 52).

On the 7th day of December, 1876, Albert Laidley died and his son John B. Laidley became the admin-

istrator of his estate (Record, p. 140). Prior to the death of Albert Laidley his son John B. Laidley, who was also a lawyer, had been employed as a clerk and otherwise in his father's office and was familiar with his affairs (Record, p. 56).

As to the relations between John B. Laidley and his father, the allegations in the amended bill are as follows :

> " That, as this complainant has learned since the filing of his original bill, at and during the time of the employment of the said Albert Laidley, as aforesaid, and while he was so engaged as the confidential agent and attorney of this complainant, the defendant John B. Laidley was a member of the family of the said Albert Laidley, and had, out of the large and liberal payments made by this complainant to the said Albert Laidley (who was theretofore in very humble circumstances), been boarded, clothed, maintained, educated and supported by his said father, as the complainant is informed and verily believes ; and for a portion, at least, of said time, was a clerk and scrivener in his father's law office at the town of Barbersville, then the county seat of Cabell County, West Virginia, in which county were situate the lands purchased for this complainant and conveyed to him through the agency and employment of the said Albert Laidley ; and the said John B. Laidley, as this complainant has learned since the filing of his original bill, was, during a portion of that time, a student of law under his father and a clerk in his said office, and at a later period of said time, as this complainant has learned since the filing of his original bill, was associated with him as partner, or jointly, in the transaction of law business, in the examination of land titles and the execution of deeds and other legal documents, as complainant

is informed and believes, and charges as true ; and during a portion of said time, while not actually associated with said Albert Laidley in the practice of law and transaction of business pertaining to the examination of titles and conveyancing, as this complainant has learned since the filing of his original bill, was an occupant of the same room or rooms with his father, and during another part of said time occupied part of a building and rooms in the same yard and enclosure, in the little village of Barbersville, in which his father had his office and home.

" And as this complainant has learned since the filing of his original bill, complainant is informed and verily believes, and here charges as true that while so a member of the family of the said Albert Laidley, and in his service and employment as such clerk and scrivener, and while receiving instruction as such student of law in his father's office, and while associated with him in the practice of law, and in the preparation of deeds of conveyance, and of the certificates of acknowledgment thereof, and in the examination and investigation of the titles to lands, the said John B. Laidley had access to all the papers, deeds and abstracts relating to the titles to lands purchased by said Albert Laidley, for complainant, and conveyed to him, and caused to be conveyed to him by the said Albert Laidley, including the said Pennybacker papers, deeds, abstracts and acknowledgments, and then and there and thereby learned and acquired in a strictly confidential way and manner, knowledge and information of and from his said father, and from said papers, deeds, abstracts and acknowledgments so accessible and open to his examination, that the acknowledgment and execution of said deed from Sarah H. G. Pennybacker and her husband (" Ex. B ") was defective, and that it might

be claimed that is was void as to the said Sarah H. G. Pennybacker, and did not bind the said Sarah H. G. Pennybacker, in whom the fee-simple to the said land was vested, and did not pass to to complainant any other or further or greater interest in said land than the husband's estate as tenant by the curtesy, by reason of a decision of the Supreme Court of Appeals of the State of West Virginia, rendered after the execution of said deed, holding and deciding that a somewhat similar certificate of acknowledgment was insufficient to constitute a due acknowledgment, and to bind a wife, which opinion and judgment of the Supreme Court of Appeals of West Virginia, for the first time, in effect reversed all decisions of the Supreme Court of Virginia, which had theretofore always held, as it has ever since held, such and similar certificates of acknowledgments to be good, valid and sufficient to pass the estate in fee owned by the wife " (Rec., pp. 56 and 57).

Thereafter, and in January of the year 1882, John B. Laidley, having theretofore ascertained by reason of his familiarity with his father's affairs, obtained while employed as a clerk in his father's office, that the acknowledgment to the deed from Mrs. Pennybacker and her husband to Huntington was in his opinion defective, approached Mrs. Pennybacker and offered to bring a suit to recover the property in question. He did not advise her that the acknowledgment to her deed to Huntington was defective, but stated to her that she had a dower right under the new Constitution of West Virginia, and suggested to her that she should talk with her friends about it, but should not consult any lawyer. He also made a proposition to her that if she did not care to go to the expense of a suit to recover this property he would give her $500 for her interest therein. Mrs. Pennybacker

consulted with her friends in regard to the matter and upon their advice agreed to convey to John B. Laidley whatever interest she had in this property for the sum of $500. She, however, stated to him that she had no interest whatever in the property so far as she knew, as she had sold it to Huntington and had received full value therefor. Her friends, however, advised her that, if Laidley was willing to give her $500 for nothing, there was no reason why she should not take it. The property at the time Laidley made this offer of $500 was worth something over $100,000, and is now of very much greater value (Record, pp. 50 and 51).

State Court Actions.

In pursuance of the offer made to Mrs. Pennybacker by Laidley the property was conveyed by her to him by deed dated January 26, 1882 (Record, p. 89), and shortly thereafter and in the month of April, 1882, John B. Laidley brought an action of ejectment against the Central Land Company of West Virginia (Record, p. 143). The case was tried, and on the 17th day of December, 1884, the jury brought in a verdict for the defendant the Central Land Company of West Virginia (Record, p. 155). A judgment was entered upon the verdict (Record, p. 156), and the case was then taken by writ of error to the Supreme Court of West Virginia and on November 26, 1887, the judgment was reversed (Record, pp. 338 and 339).

In the meantime, and in June, 1887, the Central Land Company of West Virginia filed a bill against John B. Laidley, seeking to set aside the deed from Mrs. Pennybacker to John B. Laidley of January 26, 1882, on the ground that the same was obtained fraudulently (Record, p. 222). This bill was dismissed (Record, p. 335), and the decree of dismissal was affirmed by the Supreme Court of Appeals of West Virginia (Record, p. 370).

Subsequently and in September, 1890, the action of ejectment was again tried, and a verdict found for the plaintiff John B. Laidley (Record, p. 346). After judgment was entered upon this verdict there was presented to the Judges of the Supreme Court of Appeals of West Virginia a petition for a writ of error, which was refused (Record, p. 337); and the Central Land Company of West Virginia then sued out a writ of error from this Court to the Supreme Court of Appeals of West Virginia (Record, p. 407). The case is reported in 159 U. S., 103, and was dismissed in February, 1896, by this Court for want of jurisdiction without any discussion upon the merits of the case. The opinion delivered by Mr. Justice GRAY will be found at page 413 of the Record.

RECEIVERSHIP CASE IN FEDERAL COURT.

On the 11th day of November, 1890, a bill was filed in the United States Circuit Court for the District of West Virginia by Collis P. Huntington and others against the Central Land Company of West Virginia, for the purpose of winding up the affairs of said corporation, inasmuch as its charter was about to expire (Record, p. 636). F. B. Enslow was appointed by said Court temporary Receiver of the Central Land Company of West Virginia, in accordance with the prayer of said bill, and directed to take possession of the property of the corporation in the State of West Virginia (Record, p. 638). In pursuance of the terms of said order the said Enslow took possession of the Pennybacker tract of land in question in this case, and on the 16th day of December, 1890, filed a report to the United States Circuit Court for West Virginia, *showing that on November 12, 1890, he had taken actual physical possession of all the real estate owned by said company in* West Virginia, including the 240 acres

known as the Pennybacker tract in controversy here (Record, p. 642).

Upon the same day that the temporary Receiver Enslow filed his report Huntington was appointed a special Receiver of the Central Land Company of West Virginia, and all of the property of the Land Company, including the Pennybacker tract, actually and physically taken possession of by the temporary Receiver Enslow, was turned over to and taken possession of by Huntington as such special Receiver (Record, p. 640), who has held possession of such property until the entry of the decree from which this appeal has been taken.

The order appointing Huntington special Receiver of the Central Land Company and discharging Enslow as temporary Receiver reads, so far as the Pennybacker land is concerned, as follows:

> "It is ordered that Collis P. Huntington be, and he is hereby, appointed a special receiver of this court, with power, and he is hereby so authorized, empowered and directed, to take possession of all the property belonging to the Central Land Company of West Virginia, and especially of the tract of 240 acres of land known as lot No. 4 of the Frampton land, sold by S. H. G. Pennybacker to C. P. Huntington, and by him to the Central Land Company, in the corporate limits of the city of Huntington, and F. B. Enslow, special receiver, having filed his report, showing that on the 12th day of November, 1890, he took possession of all the real estate of said company, including said 240 acres tract, he is directed to deliver same to said Collis P. Huntington, as such receiver" (Record, pp. 640 and 641).

Present Cause.

On or about the 28th day of February, 1891, Huntington as special Receiver of the Land Com pany, filed a bill against John B. Laidley and others to quiet the title to the property of the Pennybacker tract, of which he held possession as such special Receiver. Various proceedings were taken in this cause, which is the cause now before the Court, but no effort was made to bring it to a final hearing because of the pendency in the Supreme Court of the United States of the action of ejectment in the State Court, which has been heretofore referred to and which was decided in February, 1896.

After the filing of the bill in this cause an amended bill of complaint was filed on or about the 26th day of January, 1894, which contained various allegations of new matter discovered since filing the original bill in this cause, and, of course, discovered long after the trial and final determination of the ejectment action in the State Court, in which John B. Laidley was plaintiff and the Central Land Company was defendant, and of the chancery suit in the State Court, entitled Central Land Company of West Virginia against John B. Laidley (Record, pp. 56. 57, 58 and 59). This new matter tended to show that, whatever title John B. Laidley might have acquired by reason of the deed to him from Mrs. Pennybacker of January 26, 1882, and because of the decisions of the State Court in the action of ejectment and the chancery cause, was held by him in trust for the Central Land Company of West Virginia by reason of the fiduciary relations which existed between him and his father Albert Laidley at the time said Albert Laidley was employed by Huntington as his attorney to obtain for him the title to this property, and the prayer of the bill at page 67 of the Record is as follows :

"And this complainant further alleges and avers that he is advised and believes, and therefore charges to be true, that, if by the said deed (Ex. "F") of the said Sarah H. G. Pennypacker to the said defendant John B. Laidley, the legal title to said tract of land passed to the said John B. Laidley, this complainant is entitled, by reason of the premises, to a decree in this cause, compelling the said John B. Laidley, and those of the defendants holding or claiming to hold any title to any portion of said land under, by or through the said John B. Laidley, whether by direct grant and deed from the said John B. Laidley, or by intermediate conveyances and all others claiming to hold any title to said land or any part thereof under or through the said John B. Laidley to convey to him in his capacity as the Receiver of the said Central Land Company, and to those holding lots in said tract of land under and through the said Central Land Company, the legal title to the portions of said tract of land owned by and in the possession of this complainant as said receiver, and owned by and in the possession of those holding lots in said tract of land under and through the said Central Land Company, as hereinbefore set out, which said title he, the said John B. Laidley, and those of the defendants and all others whose titles and holdings are unknown to this complainant who hold or claim to hold any title to any portion of said land under, by or through the said John B. Laidley, as aforesaid, hold in equity as trustees for the benefit of this complainant and those holding lots in said tract of land under and through the said Central Land Company, as hereinbefore stated; and, therefore, in consideration of the premises, and inasmuch as this complainant is without adequate remedy at law, this complainant prays that the

defendant John B. Laidley and those of the defendants holding or claiming to hold any title to any portion of said land under, by or through the said John B. Laidley, whether by direct grant or deed from the said John B. Laidley, or by intermediate conveyances, may be compelled by a proper decree to be made herein to convey to this complainant, in his capacity as the Receiver of said Central Land Company, and to the grantees of the said Central Land Company and those claiming under them respectively by deed of special warranty, the portion of said tract of land so held and claimed by them under their several deeds, as hereinbefore mentioned."

In other words, there was alleged in the amended bill an entirely new cause of action against John B. Laidley which was absolutely unaffected by the State Court suits between Laidley and the Central Land Company.

To this amended bill the defendants demurred (Record, p. 121; Record, p. 127), and afterwards and on the 27th day of February, 1896, withdrew their demurrers (Record, p. 510) and filed a joint and separate plea and answer to the plaintiff's amended bill of complaint (Record, p. 132).

Thereafter and on the 24th day of April, 1896, the complainant in this cause obtained an order returnable June 16, 1896, directing the defendants to show cause why their plea and answer filed February 23, 1896, should not be stricken from the files of the Court as irregular and ineffective and as not being in conformity with the rules and practice of the Court, for the reason that the defendants, having pleaded to the whole bill had, nevertheless, answered all or portions of the bill. The defendants were also directed to show cause why the amended bill of complaint should not be further amended (Record, p. 511).

The hearing upon this order set for June 16, 1896, was upon that day continued until the 21st day of December, 1896, and the motion to amend the bill by inserting certain words omitted therefrom by inadvertence, was granted, and the defendants thereupon filed to the bill as amended the same plea and answer they had previously filed in the cause. The motion to strike out such plea and answer was thereupon argued before Judge JACKSON and Judge GOFF, and was denied, on the 31st day of March, 1897, and an opinion filed by Judge GOFF (Record, pp. 515 to 517).

On the same day—viz, March 31, 1897—the defendant Laidley moved to dissolve the injunction awarded in this cause, and the motion was set down for argument on June 24, 1897 (Record, p. 518). Upon the 31st of March, 1897, a motion was also made by the defendant John B. Laidley, to remove the complainant Huntington as Receiver of the Land Company. This motion was also returnable June 24, 1897 (Record, p. 646).

Afterwards and on the 14th day of May, 1897, the complainant served a notice of argument upon the defendants setting down their plea and answer for argument on June 24, 1897 (Record, p. 519), the same day which had been set for the argument of the motions to dissolve the injunction in this cause and to remove Huntington as receiver.

On June 24, 1897, all the arguments were continued until July 12, 1897, when the question whether the plea and answer of the defendants to the amended bill were good was fully argued, and the plea and answer of the defendants were overruled and leave given the defendants to file an answer to the plaintiff's bill and amended bill on or before the next rule day (Record, p. 519).

The order of the Court overruling the plea and answer of the defendants was as follows :

"And at another day—to wit, on the 12th day of July, 1897, the following order was made and entered of record, to wit:

C. P. Huntington, Special Receiver, &c., vs. John B. Laidley *et al.* } In Chancery.

"This day this cause came on to be heard upon the plea of the defendants, John B. Laidley and others, of '*res adjudicata*,' heretofore filed and set down for argument, and the court, having heard the argument of counsel on said plea and fully considered the questions arising thereon, is of the opinion that the said plea as a plea to the whole bill as amended is not a proper plea, and that the same should be rejected.

"It is therefore adjudged, ordered and decreed that said plea of '*res adjudicata*' be, and the same is, overruled; and the defendants have leave to answer the plaintiff's bill and amended bill on or before the next rule day" (Rec., p. 519).

On the same day the motion to dissolve the injunction awarded in this cause was also argued and it was ordered that said injunction should be continued and the motion to dissolve the same be overruled (Record, p. 520). The motion to remove Huntington as Receiver of the Land Company was also argued on July 12, 1897, and denied (Record, p. 647).

Thereupon and on July 13, 1897, the defendant Laidley filed another plea and answer to the complainant's amended bill (Record, 521). The other defendants did not interpose any plea, but simply joined issue with the complainant and filed an answer to the amended bill of the complainant on September 4, 1897 (Record, 536).

On the 4th day of September, 1897, the complainant obtained an order to show cause returnable January

10, 1898, why the plea and answer filed by the defendant John B. Laidley on July 13, 1897, should not be stricken from the files of the court as irregular and ineffective, and as not being in conformity with the rules and practice of this court (Record, p. 534), and on the 4th of October, 1897, filed a general replication to the answer of the defendants other than John B. Laidley filed September 4, 1897 (Record, p. 550).

It appearing that the defendant John B. Laidley and his attorneys Z. T. Vinson and William R. Thomson were about to sell a portion of the 240 acres involved in this cause, under orders of the State Court obtained in the actions of ejectment against the grantees of the Land Company before referred to, in violation of the injunction orders theretofore issued in this cause, the complainant in this cause thereupon, and on the 17th day of December, 1897, filed his petition in the United States Circuit Court of the District of West Virginia, and obtained thereon an order directing the said John B. Laidley and his attorneys Z. T. Vinson and William R. Thomson to show cause, on the 20th day of December, 1897, why they should not be fined and attached for contempt of the injunction orders issued in this cause (Record, pp. 550 and 551).

Answers to this rule to show cause were filed by John B. Laidley and by his attorney Thomson on the 20th of December, 1897 (Record, p. 574; Record, p. 563), and the hearing thereon was set for January 20, 1898.

As the cause was at issue as to all the defendants, except the defendant Laidley, and the time to take testimony in said cause so far as such defendants were concerned was shortly to expire under the rules of the court, the complainant, on the 20th day of December, 1897, applied to the Court for an order extending the time for taking testimony therein until after the cause was at issue as to the defendant Laidley—that is to say, until 90 days after the hearing of the motion to strike out the plea and answer of the defendant Laid-

ley as not being in accordance with the rules and practice of the court and of the motion to punish Laidley and his attorneys for contempt in violating the injunction heretofore issued in this cause. The application was granted (Rec., pp. 579 to 581).

The argument upon the motion to punish John B. Laidley and his attorneys for contempt in attempting to sell a portion of the property involved in this cause under the orders of the State Court ejectment actions was adjourned from time to time and was finally argued before Judge GOFF and Judge JACKSON upon the 3d day of March, 1898. The argument of the motion to strike out the plea and answer of the defendant Laidley filed on the 13th day of July, 1897, had also been adjourned until the 3d of March, 1898, but was not heard upon that day, and was continued to be heard after the disposition of the motion to punish the defendant Laidley and his attorneys for contempt.

Upon the first day of the June Term of the United States Circuit Court for the District of West Virginia, held at Parkersburg, West Virginia, on the 10th day of June, 1898, Judge GOFF orally announced that he had decided to deny the motion to punish Laidley and his attorneys for contempt upon the ground that in his opinion the United States Circuit Court was without jurisdiction to grant the injunction issued in this cause. JUDGE GOFF FURTHER ANNOUNCED THAT HE WOULD ALSO DISMISS THE BILL AND AMENDED BILLS IN THIS CAUSE ON HIS OWN MOTION ON THE GROUND THAT THE UNITED STATES CIRCUIT COURT, DISTRICT OF VIRGINIA, HAD NO JURISDICTION OVER THIS CAUSE, AND HE SET THE 25TH DAY OF JUNE, 1898, AS THE DATE FOR THE ENTRY OF FINAL DECREE IN SAID CAUSE. NO WRITTEN OPINION WAS EVER FILED BY JUDGE GOFF SETTING FORTH HIS REASONS FOR MAKING SUCH A SUMMARY DISPOSITION OF THE CASE.

On the 25th day of June, 1898, an order was entered denying the motion to punish John B. Laidley and his attorneys W. R. Thomson and Z. T. Vinson for con-

tempt, and the rule for contempt was discharged (Record, p. 582), and on the same day, viz., June 25, 1898, the final decree was entered in this cause dismissing the bill and amended bills therein without hearing and on the Court's own motion under the authority given by the fifth section of the Act of Congress approved March 3, 1875 (18 Stat., at p. 470), upon the ground that this cause did not really and substantially involve a dispute or controversy properly within the jurisdiction of the United States Circuit Court for the District of West Virginia, because of the pendency in the State Court prior to the commencement thereof of certain actions of ejectment in which John B. Laidley was plaintiff and the Central Land Company of West Virginia and its grantees were defendants, and of the chancery cause in said State Court in which the Central Land Company was plaintiff and John B. Laidley and others were defendants, which was brought in said State Court prior to the commencement of this cause (Record, p. 648).

From the final decree dismissing this suit upon the Court's own motion on the ground that the Court had no jurisdiction thereof this appeal was taken direct to this Court under the provisions of the 5th section of the Act of Congress, approved March 3, 1891, and entitled "An Act to establish Circuit Courts of Appeal and to define and regulate in certain cases the jurisdiction of the Courts of the United States and for other purposes" (Record, p. 649), and there was obtained, as is required by said act, a certificate certifying to this Court for decision the question of the jurisdiction alone of the United States Circuit Court for the District of West Virginia over this cause (Record, p. 652).

Specification of Errors.

FIRST. The Circuit Court of the United States for the District of West Virginia erred in that it dismissed this suit for want of jurisdiction upon its own motion under the provisions of the Fifth Section of the Act of Congress, approved March 3, 1875, and entitled, "An Act to determine the jurisdiction of Circuit Courts of the United States and to regulate the removal of causes from State Courts and for other purposes" (18 Stat. at Large, p. 470).

SECOND. The said Circuit Court erred in entering upon its own motion the final decree here appealed from upon the ground that it was required to dismiss this cause because it appeared to its satisfaction that it did not really and substantially involve a dispute or controversy properly within the jurisdiction of said Court (notwithstanding that said Court had the first actual physical possession of the land in controversy), because of the pendency in the State Courts of West Virginia prior to the commencement of this suit of the action of ejectment in which John B. Laidley was plaintiff and the Central Land Company of West Virginia was defendant, and of the Chancery cause in which the Central Land Co. of West Virginia was plaintiff and John B. Laidley and others were defendants.

FIRST POINT.

The Court below had jurisdiction of this cause.

The case comes direct to this Court under the fifth section of the Circuit Court of Appeals Act (26 Stat. at Large, p. 826); and the single question presented upon the appeal is whether the Circuit Court of the United States for the District of West Virginia, which had taken possession of the property in question on the 12th day of November, 1890 (Record, p. 642), through its Receiver appointed in the cause brought in said Court to wind up the affairs of the Central Land Company, in which C. P. Huntington and others were plaintiffs and The Central Land Company was defendant, was unable to take jurisdiction of this cause brought by its own Receiver to remove a cloud upon the title to his property, and to have John B. Laidley declared to hold as trustee for the Central Land Company the title to the land which he had acquired by the deed to him from Mrs. Pennybacker, dated the 26th day of January, 1882, simply because of the pendency in the State Court of West Virginia of the actions of ejectment brought in 1882 by John B. Laidley against the Land Company and its grantees, and because of the chancery cause in the State Court brought by the Land Company against John B. Laidley.

The question, as stated in the certificate required by the 5th Section of the Circuit Court of Appeals Act, is as follows:

> "Is this court without jurisdiction of this cause because of the pendency in the State Court prior to the commencement of this suit of the action of ejectment in which John B. Laidley was plaintiff and the Central Land Company of West Virginia was defendant, which was begun in the Circuit

> Court of Cabell County, West Virginia, on the first Monday in April, 1882, and of the other actions in ejectment brought prior to this cause in said State Court by the said John B. Laidley, as plaintiff, in relation to the property in question in this suit and of the Chancery cause in which the Central Land Company of West Virginia was complainant and John B. Laidley and others were defendants, which was brought in said State Court prior to the commencement of this cause" (Record p. 652).

The statute under which the Court below acted in dismissing the case was approved March 3, 1875, and is entitled "An Act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes" (18 Stat. at Large, 470), and in its fifth section provides:

> "That if, in any suit commenced in a circuit court, * * * it shall appear to the satisfaction of said circuit court at any time after such suit has been brought * * * that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court, * * * the said circuit court shall proceed no further therein, but shall dismiss the suit."

It has been settled by the decision in Wetmore vs. Rymer, 169 U. S., 115, that the action of the Circuit Court in dismissing the case is reviewable by this Court.

In considering this matter there are certain facts to be constantly kept in mind, and they are:

> FIRST. The character of the suit in the Federal Court in which the property was actually seized. It was a suit brought for the purpose of winding up the affairs of the Land Company and of placing

its property in the possession and custody of the Court. Its primary object was to take at the outset and equitably administer the property of the Land Company.

SECOND. The character of the actions in the State Court. They were all *in personam*, and none of them looked to any seizure and taking by the Court of the land in question. These actions in no way sought to take the Pennybacker tract into the custody of the Court and do with it as equity might require. They were simply actions *in personam* involving the ownership of the land, and were not eventually terminated until five years or more after the property had been seized by the Federal Court.

THIRD. There is no pretense that the State Court ever took actual physical possession of the land in question prior to its seizure by the Federal Court.

FOURTH. The property was taken possession of by the Federal Court to be administered as justice might require and subject to any rights and title thereto which might be established in the State Court or anywhere else.

FIFTH. The seizure of this land by the Receiver appointed by the lower court did not occur in the cause now before the court, but took place prior to the commencement of this case in the suit brought to settle up the affairs of the Land Company, and the right of the Federal Court to the custody of the property lies between the receivership suit and the State Court actions of ejectment.

SIXTH. Whether the Federal Court in a suit brought to wind up the affairs of a corporation had the right to take possession of this land by its Receiver resolves itself into this question: Is a Receiver prevented from taking into his hands real estate which he is ordered by the Court appointing him to seize by the mere fact that an ejectment

action is pending in the State Court involving the title to the property?

SEVENTH. The present cause seeks to have John B. Laidley declared to hold in trust for the complainant the title which the said Laidley acquired from Mrs. Pennybacker, and which was established in the State Court ejectment actions. That is to say—the case at bar is entirely independent of and has no connection with the State Court cases, and the judgments therein are in no way a bar to or *res adjudicata* in the present case. This very point was decided by the Circuit Court when it overruled the plea of *res adjudicata* (Record, p. 519) and gave the defendants leave to answer the allegations of the bill. In other words, the bill prays for relief upon evidence not known at the time of the trial of the ejectment actions upon the equitable doctrine that, as an attorney cannot avail himself of an after-acquired title to the detriment of his client, an attorney's clerk and one who otherwise had the close relations which existed between Albert Laidley and his son John B. Laidley cannot take advantage of such after-acquired title.

Another important fact not to be overlooked in the consideration of this appeal is that the case, after pending for seven years, was dismissed upon the Court's own motion, without any hearing or argument upon the question of whether the Court could take jurisdiction or not. This cause was commenced in 1891, and, at the time it was dismissed in 1898, was pending before Judges GOFF and JACKSON upon a motion to punish John B. Laidley for the violation of an injunction issued early in the cause. In 1892 the injunction was sustained after full argument by Mr. Chief Justice FULLER (Record, p. 34). The same injunction had been sustained by Judge GOFF and Judge JACKSON as late as July 12, 1898, when a motion to dis-

solve the injunction was denied (Record, p. 520). The contempt of Laidley was the advertising for sale of a portion of the land in question under orders obtained in the State Court ejectment actions. The injunction in this suit was one for the purpose of preserving the property *pendente lite*, and restrained the defendant from in any way interfering with the possession of the Receiver. It had already been decided in this case after full argument before Judges GOFF and JACKSON that the plea of *res adjudicata* filed by the defendant to the bill must be overruled, inasmuch as the bill of complaint stated a cause of action not barred by the judgments in the State Court cases (Record, p. 519). All of the defendants except Laidley had answered the bill, and the time of the complainant to take testimony had been extended until the case should be at issue as to all the defendants. The defendant Laidley had filed a plea and answer and a motion had been made by complainant to strike this plea and answer from the files as not being in accordance with the rules and practice of the Court (Record, p. 534). It was while this motion was pending and before it was argued that Laidley violated the injunction, and the two motions—the one for the violation of the injunction and the one to strike out the plea and answer—were set for argument upon the same day. The first motion was argued, but the motion to strike out the plea and answer was adjourned until the contempt motion was disposed of.

To repeat, the situation of the case when the motion to punish Laidley for contempt came on for argument was this: It was not at issue, except as to certain of the defendants, and as to such defendants the time of complainant to take his testimony had been extended. Motions by defendants to dissolve the injunction which Laidley was charged with violating had been denied over and over again. Less than a year before the argument of the motion to punish Laidley for contempt Judges GOFF and JACKSON had overruled the defendant's plea of *res adjudicata* and had by so

deciding substantially determined that the complainant was entitled to go ahead and try his case.

We dwell upon the condition of the case at the time this contempt motion came on for argument for the purpose of showing how entirely without a hearing of any kind upon the question of jurisdiction the case was summarily dismissed. It had just been decided by the very Judges who sat to hear the argument upon the motion to punish Laidley for contempt that the bill of complaint stated a good cause of action (Record, p. 519), and that the motion to dissolve the injunction must be denied (Record, p. 520). We, therefore, were lulled into security upon any question of jurisdiction and argued before the Court simply and solely the question then before it, viz.: whether Laidley had been guilty of contempt in trying to dispose of a portion of the property pending the suit. To this question alone the complainant's counsel addressed themselves, and, upon a decision against them on this question by a divided court, they were informed by Judge GOFF, who gave no written opinion stating his reasons for so doing, and gave counsel for complainant no opportunity to be heard upon the question, that he would dismiss the entire case upon the ground that the Court had no jurisdiction thereof. In Hartog vs. Memory, 116 U. S., 588, 591, it was said that "when the defendant has not so pleaded as to entitle him to object to the jurisdiction, and the objection is taken by the Court of its own motion, *justice requires that the plaintiff should have an opportunity to be heard upon the motion, and to meet it by appropriate evidence.*" It is to be noted that in every hearing in this case there were present Judges GOFF and JACKSON, and that Judge GOFF, as Circuit Judge, had the deciding vote. As a matter of fact the two judges differed in opinion upon the question of the dismissal of this case, although this does not appear clearly upon the record, so that this case—more than seven years after it had been begun—was sum-

marily dismissed by an evenly divided court upon a question which had never been argued before it.

Because of the peculiar judicial system in this country and the constant recurrence in the courts of cases over which both the Federal and State Courts have jurisdiction so far as the parties and subject-matter are concerned, there has arisen a principle of comity which has developed into a settled rule of law to the effect that, whichever of the two Courts has in the progress of the cause before it first taken actual physical possession of the property involved therein, such Court shall retain, until the end of the litigation in which the property was seized, exclusive jurisdiction of all proceedings in regard thereto. The purpose and object of this rule was, of course, to obviate any unnecessary or unseemly clash between the two Courts. Some plain and simple rule for the guidance of the Courts in a situation which might at any time become difficult and tend to unfortunate conflicts between State and Federal authorities was necessary, and the simplest rule seemed to be that that Court which had taken the property into its custody and control should have the exclusive jurisdiction of the case.

The abstract question arising in this case is as follows: Does the mere fact of the prior commencement of a State Court suit *in personam*, not looking to the taking of the property *in gremio legis*, as by a Receiver, prevent a Federal court (1) from taking possession of such property by its Receiver, and (2) of thereafter taking jurisdiction of a suit brought by such Receiver in regard thereto, when such suit is entirely independent of, and unaffected by, the case in the State Court?

We must keep clearly in mind that the Pennybacker tract was seized by the Receiver of the Federal court appointed in the suit brought to wind up the affairs of the Central Land Company, and that such Receiver, having possession of the property, brought upon new evidence this present suit in the Federal Court to have the title acquired by Laidley from Mrs. Pennybacker

and sustained in the State Court cases declared to be held by him in trust for the Land Company. In this present suit the Receiver could not of course seize possession of the property as he already had taken such possession under the orders in the suit appointing him Receiver, but there was an injunction order entered in this suit for the purpose of preserving the property *pendente lite*.

It is not at all plain upon just what theory the Court below so summarily disposed of this case, especially as no opinion was filed, but it is difficult to see how the Receiver could have acted otherwise than he did. He was made Receiver in November, 1890, and directed to take possession of all the property of the Central Land Company. The Pennybacker tract was at the time the property of the Land Company and the Receiver under the order of the Court took possession of it and he certainly would not have performed his duty as Receiver unless he had taken possession of it. It is true that at the time the Receiver of the Land Company was appointed John B. Laidley had recovered a judgment in the State Court ejectment action, but the case had been taken by writ of error to a higher Court and was not finally disposed of until nearly six years later. Was it the duty of the Receiver, all these six years, to leave this property of the Land Company to which no one else had as yet succeeded in finally establishing any adverse title or to obey the order of the Court appointing him and take the land into his custody, subject to any good adverse title which might thereafter be established in the State ejectment action whenever such title should be shown to be established to the satisfaction of the Court which appointed the Receiver? The question suggests its own answer and to our mind there would seem to have been no course open to the Receiver other than the one he took. Now, if John B. Laidley subsequently became entitled to the possession of this land by reason of any proceedings in the State Court, it was his duty to file a petition in the receivership cause in the Federal Court setting forth the facts

and asking to have such possession delivered to him. Laidley, however, did nothing of the kind, and has never applied for leave to intervene in the Receivership proceedings. The Receiver, however, long before the State ejectment action was finally decided, brought the present suit against Laidley setting up an equitable cause of action to which the State Court cases were no bar, and asking to have Laidley declared a trustee for the Land Company of any title which he had acquired by reason of his deed from Mrs. Pennybacker, which title was many years thereafter finally established in the State Court cases.

The rule, therefore, invoked by the Court below was that the mere prior commencement of an action of ejectment, without any possession or attempt to take possession of the property, prevented ever thereafter, during the continuance of such ejectment action, the bringing of any cause in the Federal Courts for the purpose of winding up the affairs of the Land Company and taking possession of its property in order to equitably administer the same.

We do not understand that any such doctrine was ever asserted or upheld in the decisions of this Court. The cases, as we think, all sustain the proposition that the test of exclusive jurisdiction is determined by the actual physical seizure of the property and there is not to be found in them even a suggestion that the time of the commencement of the action was of any importance.

Wiswall vs. Sampson, 14 How., 52, is one of the earlier cases upon this subject. The facts were as follows :

The plaintiff below brought an action of ejectment against Wiswall and claimed title to the land under two judgments against one John Ticknor, recovered in the United States Circuit Court of Alabama, in December, 1840. Executions were issued upon these judgments within the year and were returned unsatisfied.

Alias executions were issued and the land in question was levied on under one execution on February 24, 1845, and under the other on April 7, 1845, and sold under both executions upon the 7th of July, 1845, when it was bought in by the lessors of the plaintiff, who claimed title under this sale.

The defendant Wiswall gave in evidence a judgment in his favor against Ticknor, rendered in the State Court June 14, 1842, and an execution issued on the 1st of July in the same year, which was returned unsatisfied; also a deed of the lot in question from Ticknor to one Day, dated April 28, 1840, and an exemplification of a decree and proceedings in chancery on a bill filed February 7, 1843, by Wiswall against Ticknor and Day, setting aside the deed to Day as fraudulent The decree in the State Court Chancery proceedings was rendered in April, 1845, and a Receiver appointed by the State Court took possession of the property on the 27th of June of the same year. The Receiver remained in possession until the lot was sold by the Master March 1, 1847, under the decree in the State Chancery cause, and bought in for the defendant Wiswall, who claimed under this title.

The facts to which we especially call the Court's attention are that the Receiver was appointed by the State Court, and took possession of the property upon the 27th day of June, 1845, and that the sale under the executions issued by the Federal Court under judgment entered long prior to the commencement of the receivership proceedings, took place upon the 7th of July, 1845. It was held by this Court that, the State Court having taken possession of the property through its Receiver, any sale thereafter under the Federal Court execution was void and illegal. The Court, speaking through Mr. Justice NELSON, said at pages 64 and 68:

> "At the time, therefore, of this sale, the Receiver was in the possession of the premises, under the decree of the Court of Chancery—in other

words, the possession and custody of them were in the Court of Chancery itself (as the court is deemed the landlord), to abide the final decree to be thereafter rendered in the suit pending. * * * As we have already said, it is sufficient, for the disposition of this case, to hold that while the estate is in the custody of the Court, as a fund to abide the result of a suit pending, no sale of the property can take place either on execution or otherwise, without the leave of the Court for that purpose. And upon this ground we hold that the sale by the marshal on the two judgments was illegal and void, and passed no title to the purchaser."

This case is also interesting as showing that, whenever property has been taken into the custody of a Court by its Receiver, any claimant thereto under an adverse title must apply to the Court having such possession for any relief to which he may be entitled. Upon this point the Court said at page 68:

"We are, also, inclined to think, that the question of title to the property under the Marshal's sale is concluded between these parties by the judgment of the Court in the proceedings on the petition by the purchaser for the removal of the Receiver, and to be let into the possession. This, we have seen, is the appropriate remedy on behalf of a person claiming a paramount legal right to an estate which has been brought into the possession and safe-keeping of the Court of Chancery, pending the litigation in respect to it.

"This proceeding was explained by Lord ELDON in Angel vs. Smith, 9 Ves., 335, speaking of the rule in respect to sequestrators, and which he held was equally applicable in the case of Receivers. 'Where sequestrators,' he observed, 'are in possession under the process of the Court, their pos-

session is not to be disturbed, even by an adverse title, without leave, upon this principle: that the possession of the sequestrators is the possession of the Court and the Court, being competent to examine the title, will not permit itself to be made a suitor in a Court of law, but will itself examine the title. And the mode is by permitting the party to come in to be examined *pro interesse suo*; the practice being to go before the master to state his title, and there is the judgment of the master, and afterwards, if necessary, of the Court upon it.'"

The still earlier case of Hagan vs. Lucas, 10 Pet., 400, 403, states the law to be that "the first levy, whether it were made under the federal or state authority, withdraws the property from the reach of the process of the other."

In Pulliam vs. Osborne, 17 How., 471, it appeared that executions upon judgments obtained in the Federal Court were issued to the Marshal prior to the issue of executions under the State Court judgment under which the property was seized and sold. In an action brought in the United States District Court for the Middle District of Alabama, for the trial of the right to property taken under the execution from that Court, the jury were instructed that a sale under a junior execution from the State Court did not divest the lien of the execution from the District Court, and that the writ might be executed, notwithstanding the seizure and sale under the process from the State Court. The theory of the lower Court was that the lien of the Federal Court execution should be given priority because it was delivered to the Marshal before the State Court execution was delivered to the Sheriff, but this Court declined to consider the question of time, except so far as the actual seizure of the property was concerned, and reversed the case squarely upon the ground that the State Court having first acquired actual physical possession of the property

under its process was entitled to dispose of it. At page 475 the Court said:

> "The District Court instructed the jury that a sale under a junior execution from the State Court did not divest the lien of the execution from the District Court, and that the writ might be executed notwithstanding the seizure and sale under the process from the State Court.
>
> "The lien of an execution under the laws of that State commences from the delivery of the writ to the Sheriff, and the lien in the Courts of the United States depends upon the delivery of the writ to their officer. But no provision is made by the statutes of the State or United States for the determination of the priorities between the creditors of the respective Courts—State and Federal. They merely provide for the settlement of the priorities between creditors prosecuting their claims in the same jurisdiction.
>
> "The demands of the respective creditors in the present instance were reduced to judgments, and the officers of either Court were invested with authority to seize the property.
>
> "The liens were, consequently, co-ordinate or equal, and, in such cases, the tribunal which *first acquires possession of the property by the seizure of its officer may dispose of it*, so as to vest a title in the purchaser, discharged of the claims of creditors of the same grade."

Of the later cases the three decisions by Mr. Justice MATTHEWS in Gumbel vs. Pitkin, 124 U. S., 131; Heidritter vs. Elizabeth Oil-Cloth Company, 112 U. S., 294, and Covell vs. Heyman, 111 U. S., 176, are perhaps the most valuable contributions of any single Judge to this question of law.

The facts in the Gumbel case are as follows:

On Saturday, the 27th day of October, 1883, Gum-

bel instituted a suit in the State Court of Louisiana against one Joseph Dreyfus, and obtained a writ of attachment. The Sheriff, on Monday morning, October 29, 1883, attempted to make a levy upon the property of Dreyfus, but found his store in the possession of the United States Marshal under writs of attachment issued by the Federal Court on Sunday, October 28, 1883, and levied by the Marshal upon the same day, in actions commenced in said Court against Dreyfus by other creditors who were non-residents of Louisiana. Under the common law and statute law of Louisiana the writs under which the United States Marshal held the property were absolutely null and void. Subsequently, and on Monday, October 29, 1883, other writs were issued by the Federal Court, under which the Marshal took possession of the property and sold it.

On November 16, 1883, Gumbel recovered judgment in the State Court "with lien and privilege on the property herein attached, and that plaintiff's claim be paid by preference over and above all other creditors, with costs of suit," and, on December 6, 1883, a rule was granted by the State Court requiring the United States Marshal to show cause why he should not desist from interference with the Sheriff in the custody of the attached property, *or be punished for contempt of the Court in obstructing the execution of its orders and judgments.* A rule was also granted December 18, 1883, requiring the Marshal and the attaching creditors in the Federal Court to show cause why the property seized under the State Court attachment obtained by Gumbel should not be sold. Some of the defendants to these rules excepted to the jurisdiction of the State Court to issue them on the ground that the State Court was incompetent to distribute the property, "*for the reason that the said property was in the hands of the United States Marshal under attachment issued by order of the judge of the*

Circuit Court of the United States for the Eastern District of Louisiana."

Upon the filing of this objection to the jurisdiction of the State Court, the rules and exceptions were " by consent of counsel ordered to be continued indefinitely."

Thereafter by leave of Court Gumbel filed a petition of intervention in the actions pending in the United States Circuit Court in which the United States Marshal had levied on the property, setting forth the facts of his case, and attached as an exhibit a transcript of the proceedings in the State Court in the case of Gumbel against Dreyfus.

Judge MATTHEWS, referring in his opinion to the course which Gumbel had pursued in filing a petition of intervention, said, at page 143, " It may be remarked in the outset, that, if the intervenor is entitled to any relief, the mode in which he has sought it is appropriate," so that we have indicated by this court the proper and only practice in a case where a party in a State court action feels that he has been aggrieved by the course of the Federal Court in seizing property in a proceeding therein—*i. e.*, by intervention in the latter Court.

Again, at page 145, it was said :

> " It thus appears that the plaintiff in error came rightfully into the Circuit Court for whatever relief, either of a legal or equitable nature, that Court was competent to give. *It is equally true that he must depend exclusively on the Circuit Court for such relief* as he can there obtain, for it is quite clear that the Civil District Court acquired no jurisdiction over the property under the writ of attachment held by the Sheriff. * * * *The Sheriff acquired no such possession of the property as to bring it within the custody of the State Court.* * * * *The Circuit Court alone had jurisdiction to inquire into and determine all ques-*

tions relating to the property and the rights growing out of its custody held by its own officer under color of its authority."

This Court eventually decided that Gumbel was entitled to intervene, and that the prayer of his petition of intervention should be granted, but were most strongly of opinion that that question was solely for the Federal Court, which "acquired jurisdiction, by virtue of the seizure under color of its authority, to decide all questions concerning it" (p. 156).

There never was any question but that the writs under which the Marshal had seized the property were absolutely null and void, and his action in making the seizure is constantly condemned by the Court in the course of his opinion as illegal, improper and wrongful. At page 147 it was said: "No more flagrant instance of a violation of that fundamental principle can be conceived than that which is furnished by the circumstances of the present case. The very ground, and the sole ground, on which relief is denied to the plaintiff in error, is that he has been prevented from asserting it legally by the violence and wrong of those who now deny it."

Notwithstanding its characterization of the conduct of the Marshal and of the creditors in the case in the Federal Court, this Court was unwavering in its support of the principle that the wrong committed by the Marshal must be righted in the Federal Court, and in that Court alone, for the reason that the Federal Court had actual physical possession of the property.

The conclusion to be drawn from this decision of Mr. Justice MATTHEWS is that the Court which first takes actual physical possession of the property has exclusive jurisdiction of all matters in regard thereto, and that this doctrine is entirely unaffected by the question of which case was first commenced. We urge upon the Court the fact that in the Gumbel case proceedings were first begun in the State Court, but that

this Court considered such fact to be of no importance in determining the question of exclusive jurisdiction, which was held to be fixed solely by the priority of the seizure of the property.

Of course, we do not pretend to argue that by any Court taking property into its custody litigants in the other Court lose any of their rights, but simply that such litigants must, in effect, transfer their claims to the Court which has the property, and apply to such Court for a determination of their rights. As was said in the Gumbel case at page 156:

> "The case, therefore, stands thus: For the reasons growing out of the peculiar relations between Federal and state courts exercising co-ordinate jurisdiction over the same territory, the Circuit Court acquired the exclusive jurisdiction to dispose of the property brought into its custody under color of its authority, although by illegal means, and to decide all questions of conflicting right thereto; the plaintiff in error having pursued his remedy by action against his debtor in the state court, to which alone, by reason of citizenship, he could resort, attempted the levy of his writ of attachment upon the goods in the possession of the marshal; not being allowed to withdraw from the marshal the actual possession of the property sought to be attached, he served upon the marshal notice of his writ as garnishee; not being able by this process to subject the marshal to answer personally to the state court, he made himself a party to the proceedings in the Circuit Court by its leave, and proceeded in that tribunal against its officer and the creditors for whom he had acted; on a regular trial it appeared as a fact that at the time of the notice the marshal was in possession of the property wrongfully as an officer, and therefore chargeable as an individual. It was competent for the Circuit Court,

and, having the power, it was its duty to hold the marshal liable as garnishee, and, having in its custody the fund arising from the sale of the property, and all the parties interested in it before it, that court was bound to do complete justice between all the parties on the footing of these rights, and give to the plaintiff in error the priority over all other creditors, to which, by virtue of his proceedings, and as prayed for in his petition of intervention, he was entitled."

We believe that the Gumbel case is decisive of the present controversy, and before leaving it we desire to again call the attention of the Court to the fact that the seizure by the Marshal, Pitkin, was illegal and improper, and that this Court held that, notwithstanding such fact, the property was in the exclusive custody of the Federal Court, in which forum all claims thereto must be tried. If an illegal seizure under color of right places the property in the exclusive custody of the Court taking possession, so much more should it be so when there is nothing wrong or improper or illegal in the seizure, as in the case at bar, where there was nothing else for the Receiver to do when appointed by the Federal Court except to take possession of the property of the Land Company.

The case of Covell vs. Heyman, 111 U. S., 176, was brought to this Court by writ of error to the State Court of Michigan, and it appeared that the plaintiff below had brought an action of replevin against the defendant Covell to recover specific personal property to which she claimed title. The defendant Covell was a Deputy United States Marshall, and as such had possession of the property replevied by virtue of an execution issued upon a judgment of the Circuit Court of the United States for the Western District of Michigan. A judgment for the defendant was entered in the trial Court, and reversed by the Supreme Court of Michigan. This Court reversed the Supreme Court of

Michigan, and affirmed the judgment of the trial Court upon the ground that the property, being in the custody of the Federal Court and in charge of its officer, could not be interfered with by the State Court. In the course of his opinion Mr. Justice MATTHEWS, in referring to the well-known case of Freeman vs. Howe, 24 How., 450, said at pages 179, 182 and 184:

> "The point of the decision in Freeman vs. Howe, *supra*, is that when property is taken and held under process, mesne or final, of a court of the United States, it is in the custody of the law, and within the exclusive jurisdiction of the Court from which the process has issued, for the purposes of the writ; that the possession of the officer cannot be disturbed by process from any State Court, because to disturb that possession would be to invade the jurisdiction of the Court by whose command it is held, and to violate the law which that jurisdiction is appointed to administer; *that any person not a party to the suit or judgment, whose property has been wrongfully, but under color of process, taken and withheld, may prosecute, by ancillary proceedings, in the Court whence the process issued, his remedy for restitution of the property or its proceeds, while remaining in the control of that Court:* but that all other remedies to which he may be entitled against officers or parties, not involving the withdrawal of the property or its proceeds from the custody of the officer and the jurisdiction of the Court, he may pursue in any tribunal, State or Federal, having jurisdiction over the parties and the subject matter. And *vice versa*, the same principle protects the possession of property while thus held, by process issuing from the State Courts, against any disturbance under process of the Courts of the United States.
>
> * * * * * *

"The forbearance which courts of co-ordinate jurisdiction, administered under a single system, exercise towards each other, whereby conflicts are avoided, by avoiding interference with the process of each other, is a principle of comity, with, perhaps, no higher sanction than the utility which comes from concord; but, between State Courts and those of the United States, it is something more. It is a principle of right and of law, and therefore of necessity. It leaves nothing to discretion or mere convenience. These courts do not belong to the same system, so far as their jurisdiction is concurrent; and although they co-exist in the same space, they are independent and have no common superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane; and when one takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power of the other as if it had been carried physically into a different territorial sovereignty. To attempt to seize it by a foreign process is futile and void. The regulation of process and the decision of questions relating to it are part of the jurisdiction of the court from which it issues.

* * * * * *

"Property thus levied on by attachment, or taken in execution, is brought by the writ within the scope of the jurisdiction of the court whose process it is, and as long as it remains in the possession of the officer it is in the custody of the law. It is the bare fact of that possession under claim and color of that authority, without respect to the ultimate right to be asserted otherwise and elsewhere, as already sufficiently explained, that furnishes to the officer complete immunity from the process of every other jurisdiction that attempts to dispossess him. That was the defense made and relied on by the plaintiff in error in the

present case, and to which the Supreme Court of Michigan refused to give its due and conclusive effect. For that error its judgment is reversed."

Heidritter vs. Elizabeth Oil Cloth Co., 112 U. S., 294, was an action of ejectment originally begun in the State Court of New Jersey, and removed into the United States Circuit Court for that district. The precise question involved was whether the plaintiff acquired the legal title to the premises in controversy by virtue of a deed from the Sheriff, it appearing that before the proceedings upon which it was based had been begun the property had been taken possession of in a proceeding in the Federal Court, under which the defendant obtained its title thereto. The rule of law was again stated by Mr. Justice MATTHEWS with great force and accuracy, and stress was laid upon the fact that the only practical test of exclusiveness of jurisdiction is actual physical possession of the property involved. The title acquired in the proceeding in which the property had been taken into the custody of the Court was sustained, and the Court said at page 305:

"This view, though decisive of the case and resulting in the affirmance of the judgment of the Circuit Court, proceeds upon assumptions the most favorable which can be indulged to the plaintiff in error. It is merely an application of the familiar and necessary rule, so often applied, which governs the relation of courts of concurrent jurisdiction, where, as is the case here, it concerns those of a State and of the United States, constituted by the authority of distinct governments, though exercising jurisdiction over the same territory. That rule has no reference to the supremacy of one tribunal over the other, nor to the superiority in rank of the respective claims, in behalf of which the conflicting jurisdictions are invoked. It simply requires, as a matter of necessity, and, therefore, of

comity, that when the object of the action requires the control and dominion of the property involved in the litigation, that court which first acquires possession, or that dominion which is equivalent, draws to itself the exclusive right to dispose of it, for the purposes of its jurisdiction. It was in accordance with this principle that in Pulliam vs. Osborne, 17 How., 471, this court confirmed the legal title of land to a purchaser under an execution upon a judgment rendered in a State court, because first actually levied as against one claiming under an execution of the District Court of the United States, which had a priority of lien by reason of having been first issued."

This principle was again referred to by Mr. Justice MATTHEWS in the case of Ellis vs. Davis, 109 U. S., 485, 498, when he cited the case of Payne vs. Hook, 7 Wall., 425, as holding

> "That the jurisdiction of the Circuit Court of the United States, in a case for equitable relief, was not excluded, because, by the laws of the State, the matter was within the exclusive jurisdiction of its probate courts; *but, as in all other cases of conflict between jurisdictions of independent and concurrent authority, that which has first acquired possession of the res which is the subject of the litigation is entitled to administer it.*"

In Byers vs. McAuley, 149 U. S., 608, Mr. Justice BREWER stated the doctrine at page 614 as follows:

> "In order to pave the way to a clear understanding of this question, it may be well to state some general propositions which have become fully settled by the decisions of this Court, and, first, it is a rule of general application that, where property is in the actual possession of one court of competent jurisdiction, such possession cannot

be disturbed by process out of another Court The doctrine has been affirmed again and again by this Court."

Moran vs. Sturges, 154 U. S., 256, is one of the most interesting as well as one of the later cases which discuss this subject. The case came to this Court by writ of error to the Court of Appeals of the State of New York. Mr. Chief-Justice FULLER delivered the opinion of this Court, and Mr. Justice PECKHAM, then one of the Judges of the New York Court of Appeals, delivered the opinion of the Court below. The facts were as follows :

On July 31, 1891, the trustees of the Schuyler Steam Tow-Boat Company filed a petition in the State Court for the voluntary dissolution of the company and prayed for the appointment of a Receiver, and an order was thereupon entered appointing one Sturges temporary receiver of the property, and directing such Receiver, before he entered upon his duties as Receiver, to execute and acknowledge in due form of law a bond in the penal sum of $50,000. This order was entered and the petition and accompanying papers filed in the office of the Clerk of the State Court in the forenoon of August 1, 1891.

On the afternoon of August 1, 1891, which was Saturday, and on Monday, August 3, 1891, the plaintiffs in error filed libels in admiralty in the United States District Court of the Eastern District of New York, and certain of the vessels in question were seized by the United States Marshal under the process of the Admiralty Court upon the 1st of August, 1891, and the rest upon August 3, 1891.

On August 4, 1891, the State Court Receiver went on board the vessels and ascertained that the United States Marshal had taken charge thereof. The Receiver then took various proceedings in the Federal Courts for relief which were unsuccessful, and eventually filed a petition in the State Court setting forth

the facts and praying for an injunction enjoining the plaintiffs in error from prosecuting the libels which they had filed in the Federal Court. The State Court granted the injunction, and the order granting such injunction was affirmed in the General Term and the Court of Appeals of the State. The case was reversed by this Court upon the ground, among others, that, although the proceeding in the State Court was begun prior to the libel cases in the Federal Court, yet that the Marshal under the process in the latter cases had taken the first actual physical possession of the vessels in question.

The exact question presented in the State Courts is well stated by Mr. Justice PECKHAM in his decision in the Court of Appeals (136 N. Y., 169, 172), as follows:

> "The Courts below have held that, by the proper presentation of a petition to a State Court praying for the dissolution of the corporation, and by the appointment of a Receiver upon due notice of the application to the Attorney-General, the Court acquired jurisdiction of the subject matter of the proceeding, and took the property of the corporation into the custody of the law for the purpose of due administration, and that, having thus acquired jurisdiction of such subject matter, and taken the property into the custody of the law, although the Receiver had not actually and physically seized and taken it into his manual possession, the State Court acquired the exclusive jurisdiction and right to take such possession and make a final decree, and that the libellants acquired no rights under their process and should not be permitted to further proceed in the District Court. The libellants, on the other hand, contend that this is a question of jurisdiction over the particular property, and that Court obtains it which through its process and officer first actually seizes and takes possession of the property itself,

> and that, although the Receiver may have had a prior right to take possession, it was not exercised before actual possession was taken under the process from the U. S. Court, and *hence the first manual possession must determine the question of jurisdiction.*"

In the opinion in the Moran case there is much discussion by the Court speaking through Mr. Chief Justice FULLER of the exclusive jurisdiction of the Admiralty Court over all admiralty cases, but as we read the case the decision was not in any way placed upon this ground and the conclusion of the Court upon this point was simply that, if the State Court first obtained jurisdiction over the vessels in question, then such Court can only deal with the property subject to the admiralty liens. As to this the Court said at page 283 :

> " We think it entirely clear that, as a State court is without jurisdiction to enforce maritime liens, so it is incapable of displacing them, and, therefore, though under the rule laid down in Taylor vs. Carryl, the possession by the state court of property subject to such liens will not be disturbed, yet that court can only deal with the property subject thereto ; and when its jurisdiction has determined the admiralty courts may proceed."

The Court immediately thereafter went on to say that the facts in the case before it did not show any such previously acquired jurisdiction in the State Court as required the admiralty Court to wait until such State Court had dealt with the vessels in question subject to the admiralty liens. In other words, this Court held that by the prior commencement of the receivership proceedings in the State Court, such Court did not take the property in question into its custody and obtain exclusive jurisdiction of proceed-

ings in regard to it, as against the actual physical possession thereof taken by the United States Marshal under the process of the admiralty Court. As to this it was said at pages 283 and 286.

> " But, upon the facts disclosed in this record, was the District Court required to stay its hand until the termination of the proceedings in the State Court ? It is admitted that the Receiver never took actual possession of the vessels, and that he did not qualify until after the marshal had taken such possession under the libels (p. 283). * * * We are of opinion that the State Court had no jurisdiction *in personam* over the libellants as holders of maritime liens when the libels were filed ; that the question of jurisdiction was, as the case stood, one for the District Court to decide in the first instance ; that the District Court had jurisdiction ; and that the judgment under review was in effect an unlawful interference with proceedings in that Court " (p. 286).

That the fact of who had possession determined the question of jurisdiction, and that if the Receiver had obtained actual possession of the vessels before the Marshal this Court would have left the controversy in the State Court, is very apparent from the remark in the dissenting opinion of Mr. Justice BREWER, concurred in by Mr. Justice WHITE, when he said at page 288 : " I cannot agree that the respective jurisdiction of State and Federal Courts is to be determined by a scramble between Sheriff and Marshal for possession."

In Shields vs. Coleman, 157 U. S., 168, it was held that, as between the Federal Court, in which suit was first commenced, and the State Court, which actually seized the property first in a suit subsequently begun, the State Court had exclusive jurisdiction and the Federal Court had no power to appoint a Receiver and

take the property out of the hands of the State Court Receiver. The following are the facts in the case :

On the 6th of June, 1892, an order was entered in a suit in the Circuit Court of the United States for the Eastern District of Tennessee appointing one Hoyle Receiver of the property of the Morristown and Cumberland Gap Railroad Company. The Receiver took possession of the property, but afterwards was discharged on or about the 8th of June, 1892, upon the railroad company giving a bond for whatever sum might be decreed in favor of the complainant. The cause proceeded and various steps were taken therein until on or about the 12th of November, 1892, when a second Receiver of the railroad company was appointed and ordered to take possession of its property.

In the meantime, and on or about October 28, 1892, a bill was filed in the State Court and a Receiver was appointed on that day, who took possession of the property of the railroad company, and continued in possession until the Receiver appointed by the Federal Court on November 12, 1892, took it out of his hands.

The Receiver appointed by the State Court then made application to the Federal Court to have the property restored to him, upon the ground that the State Court had first taken actual physical possession of the property, although the Federal Court suit was first begun. The application was denied, and from the final decree entered in the Federal Court an appeal was taken to this Court, where the case was reversed and the property ordered to be restored to the State Court Receiver, inasmuch as the State Court first had actual physical possession of the property in question. Mr. Justice Brewer in the course of his decision said at page 177 :

> " Had the Circuit Court of the United States, when this property was in the possession of the Receiver appointed by the State Court, the power

to appoint another Receiver and take the property out of the former's hands? We are of opinion that it had not."

The importance of this decision is in the fact that the suit in the Federal Court (which Court was held not to have jurisdiction) was begun before the suit in the State Court, and that this Court gave no consideration to this, but decided the case upon the ground that the Court which first took actual physical possession of the property was entitled to exclusive jurisdiction thereof until the end of the litigation without regard to the relative date of the commencement of the conflicting controversies.

In the case of *In re* Chetwood, 165 U. S., 443, 460, the Court again reiterated the doctrine in these words:

> "The doctrine is firmly established that where * * * property is actually in the possession of one court of competent jurisdiction such possession cannot be disturbed by process out of another court of concurrent jurisdiction."

In the case of *In re* Johnson, Petitioner, 167 U. S., 120, 125, it was said:

> "We know of no reason why the rule, so frequently applied in cases of conflicting jurisdiction between Federal and State Courts, should not determine this question. Ever since the case of Ableman vs. Booth, 21 How., 506, it has been the settled doctrine of this Court that a Court having possession of a person or property cannot be deprived of the right to deal with such person or property until its jurisdiction is exhausted, and that no other Court has the right to interfere with such custody or possession."

The following cases are all to the effect that the actual physical seizure of the property involved determines the question of jurisdiction as between the State and Federal Courts:

Brown vs. Clarke, 4 How., 4.
Peale vs. Phipps, 14 How., 368.
Taylor vs. Carryl, 20 How., 583.
Freeman vs. Howe, 24 How., 450.
Buck vs. Colbath, 3 Wall., 334.
Riggs vs. Johnson County, 6 Wall., 166, 196.
Lammon vs. Feusier, 111 U. S., 17.
Rio Grande Rd. Co. vs. Gomila, 132 U. S., 478.

It would seem clear from these authorities that in the present case the prior taking of the Pennybacker tract into the custody of the United States Circuit Court for the District of West Virginia through its Receiver appointed for the purpose of winding up the affairs of the Land Company gave such Court jurisdiction over all subsequent proceedings in regard to this land. That is to say, when the Receiver was appointed by the Federal Court the Pennybacker tract was the property of the Central Land Company. It is true that at the time of the Receiver's appointment an action of ejectment involving this land was pending in the State Court and that such action might eventually result in a writ of possession being issued therein directing the Sheriff to take possession of the land and deliver such possession to one of the parties to such action. This, however, had not been done in the State Court action at the time the Receiver was appointed by the Federal Court, and might never have been done. In fact the State court ejectment action was not finally terminated until nearly six years later. The land was the property of the Land Company when the Receiver was appointed and he took possession thereof, as was his duty as such Receiver to do. If subsequent to the appointment of the Receiver and his taking the land into his custody

the action of ejectment in the State Court was carried to a conclusion and a writ of possession entered therein, then the party awarded the possession of the property was entitled to intervene in the Receivership proceedings in the Federal Court by a petition setting forth the facts and asking to have possession of the property delivered to him.

In short, the right of the Receiver to take possession of this land along with the other property of the Land Company was not affected in any way by the ejectment action in the State Court and such possession did not in any manner interfere with or otherwise affect the ejectment action and the carrying it through to its conclusion and the issue of process to execute the judgment therein. The only result of the seizure of the land by the Receiver was that the land could not be seized by the Sheriff under the process of the State Court, inasmuch as it was in the custody of the Federal Court, but the party awarded the writ of possession in the State Court was entitled to apply to the Federal Court for relief and ask the Federal Court to award the property to him because of the writ of possession obtained by him in the State Court.

The situation here is very similar to that arising in Heidritter vs. Elizabeth Oil-Cloth Co., 112 U. S., 294, where it was said that the seizure of the property by the Federal Court in no way prevented the proceeding in the State Court under the Mechanics' Lien Law from being carried to a final judgment, but that the final process of the State Court could not be levied upon the land because it was already in the possession of the Federal Court. As to this Mr. Justice MATTHEWS said at page 304 :

> " But it is understood, as a qualification of what has been said, that we do not mean to decide that the plaintiffs in the actions in the State court might not, without prejudice to the jurisdiction of

the District Court, commence their actions, so far as that was a step required by the mechanic's lien law of New Jersey, for the mere purpose of fixing and preserving their rights to a lien, provided, always, they did not prosecute their actions to a sale and disposition of the property, which, by relation, would have the effect of avoiding the jurisdiction of the District Court under its seizure. That was the course, under similar circumstances, adopted and sanctioned by the Supreme Judicial Court of Massachusetts in Clifton vs. Foster, 103 Mass., 233, where a petition to enforce a mechanic's lien, which, by statute, it was necessary to file within a fixed time in order to preserve it, was permitted to be filed after the property, by the bankruptcy of the owner, had passed into the custody of the District Court, but all further proceedings thereon were stayed to await the action of that court in the bankruptcy proceedings on the ground that such seasonable filing was necessary to keep the lien alive, and that, without further proceedings, it could not be construed as an encroachment upon the jurisdiction of the bankruptcy court. The distinction seems to us reasonable and just, and is supported by the decisions in Williams vs. Benedict, 8 How., 107, and Yonley vs. Lavender, 21 Wall., 276. In conformity with it, we refrain from pronouncing the proceeding in the State court of New Jersey invalid, so far as they do not affect the legal title of the purchaser at the marshal's sale to the premises in controversy. We decide, not that they are invalid for the purpose of declaring and establishing the lien, but that they are not good for the purpose of enforcing it, as was attempted by a sale and conveyance of the premises in controversy."

In the case at bar the judgment in favor of the plaintiff in the State Court ejectment action was en-

tered upon the 12th day of September, 1890 (Record, p. 347), and a stay of the execution of such judgment for sixty days was granted to enable the Land Company to apply to the Supreme Court of Appeals for a writ of error to such judgment. On the 14th day of November, 1890, the Supreme Court of Appeals denied the application for a writ of error (Record, p. 401). Thereafter and on the 7th of July, 1891, a writ of error from this Court to the Supreme Court of Appeals of West Virginia was granted, and the cause was decided on February 26, 1896, when it was dismissed for want of jurisdiction (Record, p. 410).

Now, it would seem clear that the Receiver appointed by the Federal Court upon November 12, 1890, to wind up the affairs of the Land Company, was under no obligation to disobey the order of the Federal Court and fail to take possession of the Pennybacker tract, because of an ejectment action pending in the State Court which was not determined until nearly six years thereafter, and which might then have terminated in favor of the Land Company. In other words, a Receiver appointed by any Court, whether State or Federal, and directed to take into his custody and control real estate, is not prevented from taking such possession and custody thereof because of the pendency in a court of concurrent jurisdiction of an action of ejectment relating to the title to such land against the corporation of which he is the Receiver. Such possession does not interfere with the progress of the ejectment action, and, if the plaintiff therein should ultimately be successful, he simply applies to the Court which has the possession thereof for a restoration of the property to him, instead of levying directly upon the property under process of the Court in which he has successfully established his title.

If we are right as to this and if the temporary Receiver Enslow was entitled to take possession of the Pennybacker tract and to turn such property over to the special Receiver Huntington, then it would

certainly seem plain that Huntington, as such Receiver, was required and it was his duty to bring a suit upon newly discovered evidence to have Laidley declared a trustee for the Land Company of whatever title to the Pennybacker tract was established in him by reason of the State Court ejectment action, and that the Circuit Court of the United States had jurisdiction of such equitable action so long as the necessary difference of citizenship existed, and certainly was not ousted of such jurisdiction by the State Court ejectment action.

The point which we desire should not escape the Court's attention is that the question of the prior seizure of this property does not lie between the present cause and the State ejectment action, but between the cause in which the Receiver was appointed to wind up the affairs of the land company and the ejectment action, and the questions presented to the Court are :

FIRST. IS A RECEIVER APPOINTED BY A FEDERAL COURT IN A PROCEEDING BROUGHT TO DISSOLVE A CORPORATION PREVENTED FROM TAKING POSSESSION OF THE PROPERTY OF SUCH CORPORATION BECAUSE OF THE PRIOR COMMENCEMENT IN THE STATE COURT OF AN ACTION OF EJECTMENT INVOLVING SUCH PROPERTY?

SECOND. IF NOT, THEN IS THE FEDERAL COURT, WHICH HAS THE PROPERTY IN ITS POSSESSION, *without jurisdiction* OF A SUIT IN WHICH THE REQUISITE CITIZENSHIP APPEARS AND THE AMOUNT REQUIRED BY STATUTE IS INVOLVED, BROUGHT BY ITS OWN RECEIVER UPON A NEW STATE OF FACTS FOR THE PURPOSE OF HAVING THE SUCCESSFUL PARTY IN THE EJECTMENT ACTION DECLARED A TRUSTEE OF THE TITLE ACQUIRED BY HIM THEREIN?

I.

The answer to the first question is, we think, to be found in the authorities which we have cited from the reports of this Court, and perhaps the most happy

statement of the doctrine is that of Mr. Justice BRADLEY in Wilmer vs. The Atlanta and Richmond Air Line Railway Co., 2 Woods, 409, 427, when he said:

> "The test, I think, is this: Not which action was first commenced, nor which cause of action has priority or superiority, but which Court first acquired jurisdiction over the property. * * * Service of process gives jurisdiction over the person. Seizure gives jurisdiction over the property; *and, until it is seized, no matter when the suit was commenced, the Court does not have jurisdiction.*"

II.

As to the second question, our position is this:

The Receiver of this Court, having taken possession of this land in regard to the title to which there were then pending certain actions of ejectment in the State Court, afterwards ascertained facts which were not litigated in the State Court, which were in no way connected with the matters tried in such ejectment actions and which were not known at the time of the trial of such actions.

These facts so learned by the Receiver establish an entirely new and independent equitable cause of action in no way related to or connected with the ejectment actions. This cause of action, briefly stated, is that Laidley, although he may have acquired the title to this property by reason of the deed of Mrs. Pennybacker and the ejectment actions in the State Court, holds that title in trust for the Special Receiver of the Land Company by reason of the confidential relations between himself and his father, Albert Laidley, knowledge of which relations was obtained by such Receiver long after the trial of the ejectment action in the State Court. IT IS SIMPLY AN APPLICATION OF THE FAMILIAR DOCTRINE THAT AN

ATTORNEY CANNOT TAKE ADVANTAGE OF AN AFTER ACQUIRED TITLE TO THE INJURY OF HIS CLIENT.

It will be noticed that this equitable cause of action is an entirely distinct and independent cause of action, having no connection with the State Court ejectment actions. The amended bill simply states facts from which it appears that the title acquired by Laidley from Mrs. Pennybacker and sustained in the ejectment actions is held by him as trustee for the Special Receiver of the Land Company. It is a new cause of action arising on new facts. It is also a cause of action clearly within the equitable cognizance of this Court, and this Court also has jurisdiction of the case by reason of the difference of citizenship of the parties, the amount involved and the further fact that it is brought by its own Receiver.

Suppose these ejectment actions had been brought in the Federal Court and that Laidley had been successful. Afterwards the Receiver acquires knowledge of the matter alleged in this amended bill. Would he be prevented in any way from filing a bill setting up these facts and asking to have it declared that Laidley's title, acquired in the ejectment actions, was held by him as trustee? We take it that the right to bring such a suit would be unquestioned.

It is not clear how any distinction is to be drawn from the mere fact that the ejectment action was brought in the State Court. It does not follow simply from that fact that the Receiver is without remedy and cannot have Laidley declared a trustee for him, because of the facts which he has ascertained in regard to Laidley's relations with his father, Albert Laidley, Huntington's attorney. Nor does it follow that whatever remedy or relief the Receiver seeks must be obtained in the State Court.

If the Receiver in his bill and amended bill states facts which make out a case for equitable relief under the recognized rules of equity, and this Court has jurisdiction of the cause by reason of the difference of

citizenship of the parties, there is nothing to prevent the Receiver from taking his choice of forums and electing to have Laidley declared either in the Federal Court or the State Court, as he deems best, a trustee, *mala fide*, for him of the title which Laidley acquired to the land by the Pennybacker deed and which was sustained in the State Court ejectment actions.

In Arrowsmith vs. Gleason, 129 U. S., 86, it appeared that Gleason was the guardian of Arrowsmith when the latter was an infant. Gleason applied to the Probate Court of Defiance County, Ohio, for leave to sell certain lands inherited by his ward from his father. The application was granted and Gleason sold a portion of the land, and after some years another portion of it. The sales were confirmed and approved by the Probate Court.

After Arrowsmith became of age he discovered, as he thought, that the sales of a portion of the land made by his guardian were made in fraudulent collusion with another man named Harmening, whose heirs then held the land. It seems from the opinion that Arrowsmith *brought an action of ejectment in the State Court against the heirs of Harmening, and was defeated.*

After being defeated in the State Court Arrowsmith filed a bill in the Federal Court charging collusion and fraud between his guardian Gleason and Harmening, and alleging that the sales made by Gleason were in violation of his trust, and in fraud of his (Arrowsmith's) rights, "as the said Harmening and the said Gleason well knew."

It was contended in the Arrowsmith case that the complainant was without remedy in the Federal Court as any interference with the orders and judgments of the State Court would be in violation of Sec. 720, U. S. Revised Statutes. This contention was, however, overruled by the Supreme Court, which held, speaking through Mr. Justice HARLAN, at page 97, as follows :

"But is the appellant without remedy for the wrong alleged to have been done him? We think not. If all the substantial averments of his bill are true—and, upon demurrer, they must be so regarded—he makes a case of actual fraud, upon the part of his guardian, in which Harmening to some extent participated, or of which, at the time, he either had knowledge or such notice as put him upon inquiry. According to these averments, there was no necessity whatever for these sales, at least for the sale of the east half of the south-west quarter of section thirty-six, township four north, range three east, in Defiance County, containing eighty acres, or of the smaller tract in Paulding County, or of the four hundred acres in Defiance County that were sold in December, 1874. It is alleged, and by the demurrer it is admitted, that, when the last sale was made, Gleason had in his hands unexpended, as Harmening well knew, large sums derived from the previous sales, as well as considerable amounts received from releases of tax titles on lands held by appellant; and yet, by collusion with Harmening, and in order that the latter might get the lands for less than their value, he made the sale of the four hundred acres.

"But it is insisted that the Circuit Court of the United States, sitting in Ohio, is without jurisdiction to make such a decree as is specifically prayed for; namely, a decree setting aside and vacating the orders of the Probate Court of Defiance County. If by this is meant only that the Circuit Court cannot by its orders act directly upon the Probate Court, or that the Circuit Court cannot compel or require the Probate Court to set aside or vacate its own orders, the position of the defendants could not be disputed. *But it does not follow that the right of Harmening, in his lifetime, or of his heirs since his death, to hold these*

lands, as against the plaintiff, cannot be questioned in a court of general equitable jurisdiction upon the ground of fraud. If the case made by the bill is clearly established by proof, it may be assumed that some state court, of superior jurisdiction and equity powers, and having before it all the parties interested, might afford the plaintiff relief of a substantial character. But whether that be so or not, it is difficult to perceive why the Circuit Court is not bound to give relief according to the recognized rules of equity, as administered in the courts of the United States, the plaintiff being a citizen of Nevada, the defendants citizens of Ohio, and the value of the matter in dispute, exclusive of interest and costs, being in excess of the amount required for the original jurisdiction of such courts (pages 97 and 98). * * *

" While there are general expressions in some cases apparently asserting a contrary doctrine, the later decisions of this Court show that the proper Circuit Court of the United States may, without controlling, supervising or annulling the proceedings of State courts, give such relief, in a case like the one before us, as is consistent with the principles of equity " (p. 99). * * *

" *These principles control the present case, which, although involving rights arising under judicial proceedings in another jurisdiction, is an original, independent suit for equitable relief between the parties; such relief being grounded upon a new state of facts, disclosing not only imposition upon a court of justice in procuring from it authority to sell an infant's lands when there was no necessity therefor, but actual fraud in the exercise, from time to time, of the authority so obtained.* As this case is within the equity jurisdiction of the Circuit Court, as defined by the Constitution and laws of the United States, that Court may, by its decree, lay hold of the parties, and compel them to do what according to the

principles of equity they ought to do, thereby securing and establishing the rights of which the plaintiff is alleged to have been deprived by fraud and collusion" (p. 101).

This same principle was again declared by the Supreme Court in Marshall vs. Holmes, 141 U. S., 589, when it was said at page 596:

"While, as a general rule, a defense cannot be set up in equity which has been fully and fairly tried at law, and although in view of the large powers now exercised by courts of law over their judgments, a court of the United States sitting in equity will not assume to control such judgments for the purpose simply of giving a new trial, it is the settled doctrine that 'any fact which clearly proves it to be against conscience to execute a judgment: and of which the injured party could not have availed himself in a court of law, or of which he might have availed himself at law, but was prevented by fraud or accident, unmixed with any fault or negligence in himself or his agents, will justify an application to a court of chancery (p. 596). * * *

"*These authorities would seem to place beyond question the jurisdiction of the Circuit Court to take cognizance of the present suit, which is none the less an original, independent suit, because it relates to judgments obtained in the court of another jurisdiction. While it cannot require the State court itself to set aside or vacate the judgments in question, it may, as between the parties before it, if the facts justify such relief, adjudge that Mayer shall not enjoy the inequitable advantage obtained by his judgments.* A decree to that effect would operate directly upon him, and would not contravene that provision of the statute prohibiting a Court of the United States from grant-

ing a writ of injunction to stay proceedings in a State court (pp. 599 and 600). * * *

"While the Court, upon final hearing, would not permit Mrs. Marshall, being a party to the actions at law, to plead ignorance of the evidence introduced at the trial, it might be that relief could be granted by reason of the fact, distinctly alleged, that some of the necessary proof establishing the forgery of the letter was discovered after the judgments at law were rendered, and after the legal delays within which new trials could have been obtained, and could not have been discovered by her sooner. It was not, however, for the State Court to disregard the right of removal upon the ground simply that the averments of the petition were insufficient or too vague to justify a court of equity in granting the relief asked. The suit being, in its general nature, one of which the Circuit Court of the United States could rightfully take cognizance it was for that Court, after the cause was docketed there, and upon final hearing, to determine whether, under the allegations and proof, a case was made which, according to the established principles of equity, entitled Mrs. Marshall to protection against the judgments alleged to have been fraudulently obtained" (pp. 600 & 601).

In Jackson vs. Ludeling, 21 Wall., 616, 633, it was claimed that a bill could not be filed in the Federal Court which sought to have a title to property obtained by the defendants in a State Court and made binding and effectual against all the world by what was called a judgment of homologation declared to be held by such defendants as trustees *mala fide* for the complainants. This contention was not sustained, and the Court said, at page 634:

"Fraud and trust are entirely outside the record. A sale may have been conducted legally

> in all its process and forms, and yet the purchaser may have been guilty of fraud, or may hold the property as a trustee. In this case the complainants rely upon no irregularity of proceeding, upon no absence of form. The forms of law were scrupulously observed. But they rely upon faithlessness to trusts and common obligations, upon combinations against the policy of the law and fraudulent, and upon confederate and successful efforts to deprive them wrongfully of property in which they had a large interest, for the benefit of persons in whom they had a right to place confidence."

In Rolling Mill Co. vs. Ore and Steel Co., 152 U. S., 596, 615, it was said by Mr. Justice JACKSON that

> "It is well established that equity will entertain jurisdiction and afford relief against the collection of a judgment where, in justice and good conscience, it ought not to be enforced, as where there is a meritorious, equitable defense thereto, which could not have been set up at law, or which the party was, without fault or negligence, prevented from interposing."

The doctrine of the cases just cited would seem to be that if a party has an equitable cause of action he is not debarred and precluded from asserting it in a Federal Court simply because at some previous time there have been cases and judgments in the State Court relating to the same subject matter. To apply this doctrine to the facts in the present case, there would seem to be no reason why Huntington, as Special Receiver, should not assert and prove in the Federal Court that Laidley's title to the Pennybacker tract, which Laidley succeeded in establishing in the State Court ejectment action, was, by reason of new facts discovered since the trial of the ejectment action,

held by Laidley in trust for the Land Company. If Huntington, as Special Receiver, should make out the case as alleged in the bill, and the Federal Court should give him the relief prayed for and should declare Laidley to be trustee for the Land Company of the title acquired by him from Mrs. Pennybacker in 1882, such relief would not in any way set aside or vacate the judgments of the State Court, or invade or impinge upon the title thereby determined. The Federal Court would simply decide the case then before it and grant the relief the parties were entitled to upon the facts then presented. In other words, the relief sought is not to overturn the State Court judgments. It is not asked that such judgments should be vacated and set aside, but that, by reason of facts subsequently learned, the title established under such judgments should be held in trust by Laidley for the Land Company. That is to say, a decree in this cause in favor of the complainant would operate directly upon Laidley, would declare him to hold the title acquired by him from Mrs. Pennybacker, as trustee for the complainant, because of his relations with his father, Huntington's attorney, and would in no way violate the provisions of the Federal Statute prohibiting a Court of the United States from interfering with or enjoining the proceedings of a State Court.

It would seem clear that the extreme effect which, under any circumstances, can be given to the State Court cases is that they constitute a bar to the present case. This is a matter of defense to be set up by plea of *res adjudicata* or answer and to be proved. It has been so set up once in this suit by plea and the defense was overruled, and it was held that the bill did state a good cause of action, which was in no way barred by the State Court judgments. In any event such a defense does not raise any question of the jurisdiction of the Court to try the case, and would seem to furnish no ground for the summary dismissal of this case upon the Court's own motion under the

fifth section of the Act of March 3, 1875 (18 Stat. at Large, 470).

We, therefore, respectfully submit that the amended bill in this cause clearly establishes a good equitable cause of action against Laidley, and that the lower Court was not without jurisdiction of such equitable action, merely because actions of ejectment had been previously brought in the State Court in regard to the same land and that the complainant should be allowed to try out his case and prove the allegations of his bill.

SECOND POINT.

The decree of the Court below dismissing the cause for want of jurisdiction should be reversed.

MAXWELL EVARTS,
F. B. ENSLOW,
Of Counsel for Appellant.

No. 103.

Answer to motion &c

SUPREME COURT, U.S.
FILED
APR 14 1900
JAMES H. MCKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 103.

C. P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia,
Appellant,

vs.

JOHN B. LAIDLEY, W. S. LAIDLEY, THOMAS J. BRYAN ET AL.,
Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Answer to Petition of Appellees to be relieved from payment of costs of Appeal.

MAXWELL EVARTS,
F. B. ENSLOW,
Of Counsel for Appellant.

C. G. Burgoyne, Walker and Centre Streets, New York.

Supreme Court of the United States.

OCTOBER TERM, 1899, No. 105.

COLLIS P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia,
Appellant,

AGAINST

JOHN B. LAIDLEY ET AL.,
Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Answer to Petition of Defendants and Appellees.

In the petition of the appellees asking to be relieved from the payment of the costs of this appeal, which is to be presented to this Court on Monday, April 16, 1900, it is stated by the petitioners that the case was dismissed in the Court below "without their insisting on it and over their protest."

We do not so understand it. Certainly no such position was taken upon the briefs of the appellees or upon the argument of the case in this court. It may possibly be true that there was some difference of opinion among the numerous counsel for the various appellees upon the entry of the decree below and as to

what such decree should contain, but it is a mistake to suppose that the decree appealed from was entered over the protest of the appellees and without their insisting upon it.

Aside from this aspect of the matter we can only say that all the appellees argued most strenuously in this court, both orally and upon their printed briefs, in support of the final decree below, and have endeavored to avail themselves of the benefit of such decree.

Even if some one of the many counsel for the defendants below may have thought it unwise on the part of his associates to enter such final decree, yet such doubt as to the advisability of the course taken by the majority of his associates was cast aside, and the counsel for the appellees were one and all unanimous in seeking to enter the decree as finally framed by them and when entered in upholding and having the same sustained.

There would seem little reason for the suggestion that the costs of this appeal should abide the final result of the suit. The appellant here has been aggrieved and injured by the decision of the Court below, without regard to the ultimate result of the suit. This appeal is in the nature of an independent and separate proceeding, and the decision of this Court sustaining the appeal is the end of that proceeding. Whether the complainant eventually loses his suit or not, has nothing whatever to do with the wrong done him by the trial court having dismissed his bill for want of jurisdiction, and we fail to see that any ground is stated in the petition why an unsuccessful party in this court, after putting his adversary to great trouble and expense, should not pay the costs in this court of the appeal.

MAXWELL EVARTS,
F. B. ENSLOW,
Of Counsel for Appellant.

SUPREME COURT

—OF THE—

UNITED STATES.

—o—

OCTOBER TERM 1899.

—o—

NO. 105.

—o—

C. P. Huntington, as Special Receiver of the Central Land Company of West Virginia, Appellant,

vs.

John B. Laidley, W. S. Laidley, Thos. J. Bryan, et al., Appellees.

On appeal from a Decree of the Circuit court of the United States for the District of West Virginia.

BRIEF FOR APPELLEES.

The final decree rendered by the Circuit court of the United States for the District of West Virginia, from which this appeal is taken, is found on pages 647 and 648 of the

printed record, and after reciting the various pleadings that has been filed, the court says:

> "And it appearing from such examination to the satisfaction of this court, upon consideration thereof, that this suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of this court, because of the pendency in the State court prior to the commencement of this suit of the action of ejectment in which John B. Laidley was plaintiff, and The Central Land Company of West Virginia was defendant, which was begun in the Circuit court of Cabell county, West Virginia, on the first Monday of April, 1882, and of the other actions of ejectment brought in said State court by the said John B. Laidley as plaintiff, and in relation to the property in question in this suit, and of the chancery cause in said State court, in which the Central Land Company of West Virginia was plaintiff and John B. Laidley and others were defendants, which was brought in said State court prior to the commencement of this cause, and this court being therefore, for the aforesaid reason, of the opinion that it is required to dismiss this suit by the 5th Section of the Act of Congress approved March 3rd, 1875, and entitled, —"An Act to Determine the Jurisdiction of the Circuit courts of the United States, and to regulate the Removal of Causes from State courts, and for other Purposes;" it is now, therefore, of this court's own motion, adjudged and decreed that this suit and the bills and amended bills therein be, and they are, hereby dismissed and stricken from the docket of this court, without costs."

The foregoing action of the court in dismissing the appellant's bills and amended bills is based as recited therein, upon Section 5, of an Act of Congress approved March 3rd, 1875. That section reads as follows:

"That if in any suit commenced in the Circuit court, or removed from a State court to the Circuit court of the United States, it shall appear to the satisfaction of said Circuit court, at any time after such suit has been brought or removed thereto, that said suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit court, or that the parties to the said suit have been improperly or collusively made or joined, either as plaintiff or defendant for the purpose of creating a case cognizable and removable under this act, the said Circuit court shall proceed no further therein, but shall dismiss the suit, or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just."

The facts upon which the Circuit court based the foregoing decree dismissing the appellant's bill and amended bills may be stated as follows:

On the 25th day of February, 1870, S. H. G. Pennybacker and her husband John M. Pennybacker, attempted to convey to C. P. Huntington the title to 240 acres of land in Cabell county, West Virginia, and on October 16, 1871, C. P. Huntington and wife, by deed, attempted to convey the same title to The Central Land Company of West Virginia. John M. Pennybacker, the husband of S. H. G. Pennybacker, died on May 5th, 1881; and on January 26th, 1882, the widow, S. H. G. Pennybaker, conveyed to John B. Laidley, title to the same 240 acres of land mentioned and described in the deed from C. P. Huntington and wife to The Central Land Company of West Virginia.

In April, 1882, Laidley instituted in the Circuit court of Cabell county, West Virginia, an action of ejectment to try

the question of title as well as the right of possession of the land, against The Central Land Company of West Virginia.

This suit was prosecuted in the Circuit court of Cabell county to a trial which was had on December 22d, 1884 when a judgment was rendered for the defendant by the Circuit court on that date. Laidley at once sued out of the Supreme court of Appeals of West Virginia, a writ of error, and said Supreme court on November 26th, 1887, reversed the judgment of the Circuit court in favor of the defendant, and remanded the case for a new trial. The report of this case is found under the title of Laidley vs. The Central Land Company, in 30th West Virginia Report, page 505

By an agreement, the case was then removed to the Circuit court of Summers county, West Virginia, on January 16th, 1888. In June, 1887, the Central Land Company of West Virginia brought its suit in chancery, in the Circuit court of Cabell county, against John B. Laidley, in which, among other things, it sought to set aside the deed made by S. H. G. Pennybacker to John B. Laidley, as a cloud upon its title And the action of ejectment that had been originally brought by Laidley in 1882, was suspended by the following agreement entered of record by the Circuit court of Summers county, in the action of ejectment wherein Laidley was plaintiff and the Central Land Company of West Virginia was defendant, which agreement is in the following words:

> "This day came the plaintiff by his attorneys, and the defendant by its attorneys; and thereupon the defendant moved the court for a stay of proceedings in these causes until the decision of the Supreme court on the appeal hereinafter mentioned, upon the

ground that there is pending in the Supreme court of Appeals of this State, an appeal by the defendant from a decree of this court in the chancery cause of the Central Land Company of West Virginia against said John B. Laidley and others, and read in evidence in support of said motion the record of said chancery suit and of the appeal thereon; and the plaintiff resisted said motion and insisted upon a trial of said action of ejectment. And the court, having fully considered the matters arising upon said motion, doth decide to stay said actions until the decision of the appellate court in said chancery cause upon condition and not otherwise, that said defendant, the Central Land Company of West Virginia agrees here in open court that judgment be at once entered for the plaintiff in said actions of ejectment, for the estate in fee simple in the lands in the declarations in said actions described, without further defense, in the event the decree aforesaid in said chancery suit be affirmed upon said appeal so far as it relates to the title to the land, but judgment so to be entered to be without prejudice to the right of the defendant, if any it has, to compensation for any improvements it may have placed upon the land in controversy: And thereupon the said defendant in open court accepted said stay of proceedings in said actions of ejectment upon the terms aforesaid."—(See printed record, page 340.)

The foregoing was had and based upon Section 6, of Chapter 136, of the Code of West Virginia, at page 860 of the Code of 1891, which is as follows:

"Whenever it shall be made to appear to a Circuit court, or to a Judge thereof in vacation, that a stay of proceedings in a case therein pending should be had until the decision of some other action, suit or proceeding, in the same, or another court, such court or Judge shall make an order staying proceed-

> ings therein, upon such terms as may be prescribed in the order. But no application for such stay shall be entertained in vacation until reasonable notice thereof has been served upon the opposite party."

The trial of the action of ejectment instituted by said Laidley was by the foregoing order suspended until the chancery cause instituted by the Central Land Company of West Virginia against Laidley had been determined. This chancery cause had also been removed, by agreement, from the Circuit court of Cabell county to the Circuit court of Summers county, and a final decree was rendered by the court in that cause on May 14th, 1888, dismissing the plaintiff's bill, and from this decree of the Circuit court of Summers county dismissing the plaintiff's bill, an appeal and supersedeas was sued out of the Supreme court of the State, in August, 1888. The cause was elaborately argued in the Supreme court of the State, and the decree dismissing the bill was affirmed by that court. The report of the case is found under the title of The Central Land Company of West Virginia against John B. Laidley, et al., 32 West Virginia Report, 134.

After the Central Land Company of West Virginia had failed in the chancery proceedings to have Laidley's deed set aside, the trial of the action of ejectment which had been suspended by the agreement entered therein September 5th, 1888, was taken up and continued, after being remanded to the Cabell county Circuit court, in September, 1890. The Central Land Company of West Virginia refused to abide by said agreement and allow judgment to be given for the plaintiff Laidley in said actions of ejectment, as entered of record in said agreement, and a trial was had in the Circuit court of

Cabell county, which resulted in a verdict and judgment for the plaintiff Laidley for the title and possession in fee simple of the said tract of land, which judgment was rendered on the 12th day of September, 1890.

From this judgment, the defendant, The Central Land Company of West Virginia applied to the Supreme court of Appeals of West Virginia, on November 14th, 1890, for a writ of error, seeking a review of said judgment. The Supreme court of the State refused the application for the writ of error, and from that action of the Supreme court of the State, an application was made to the Supreme court of the United States for a writ of error, which was allowed on July 7th, 1891. The matter was brought on and heard in the Supreme court of the United States. On January 3rd, 1895, the writ of error was dismissed. This action of the last named court is reported under the title of Central Land Company against Laidley, 159 U. S., page 103.

On March 26th, 1891, a writ of possession was issued in the action of ejectment of Laidley against The Land Company, by the Circuit court of Cabell county, West Virginia.

In the meantime, to-wit: on November 11th, 1890, C. P. Huntington, I. E. Gates and others, filed their bill in equity against the Central Land Company of West Virginia, in the Circuit court of the United States, and F. B. Enslow was appointed as Special Receiver, and ordered to take possession of all the property of the Central Land Company, and especially the 240 acres, the subject matter of the Laidley litigation. On the 16th day of December, 1890, F. B. Enslow, Special Receiver, reported that on the day following his appointment as such, that he took possession of said property, and said

Enslow as special receiver was discharged, and C. P. Huntington was appointed permanent special receiver.

This was an EX PARTE proceeding, and Laidley was never made party thereto.

On the day of the filing of the bill of Huntington, Gates and others against the Central Land Company, another bill was filed in said court, upon which an injunction was granted enjoining Laidley from taking possession of the said tract of land, which suit was styled, The Central Land Company of West Virginia against John B. Laidley, filed in the Circuit court of the United States, November 11th, 1890.

After C. P. Huntington had been appointed Special Receiver in December, 1890, he filed another bill on February 28th, 1891, upon which Laidley was enjoined from taking possession of said land.

Prior to the institution of the action of ejectment by Laidley against the Land Company, in 1882, the Land Company had sold certain parcels of the land embraced within the 240 acre tract, to C. F. Remley, and sixteen others who had taken possession of the lots purchased by them, and had placed improvements thereon. On the 1st Monday of November, 1883, Laidley instituted his seperate actions of ejectment agains Remley, and sixteen others, in the Circuit court of Cabell county, West Virginia. The record of said proceedings is found at page 440, et seq. of the printed record in this case. These actions of ejectment against Remley and others were prosecuted by Laidley to final judgment on the 10th day of September, 1890. (See page 444, record.)

In said actions against said Remley and others, defend-

ants filed claims for improvements and upon the filing of said claims, Laidley elected to allow said claims for improvements, and took a judgment and order of sale against the property, for the value of the land recovered by him, instead of taking a judgment for its possession and the transfer of the title. This Laidley was entitled to do by sec. 10-13, Chap. 91, Code of W. Va.

Orders to sell in all of said cases were entered on the 15th day of December, 1890, and Messrs. John H. Holt and C. W. Campbell were appointed special commissioners to make said sales. (See p. 445, record.)

On the 21st day of October, 1897, the Circuit court of Cabell county substituted Wm. R. Thompson as special commissioner to make sale of said property, in lieu of John H. Holt and C. W. Campbell, and under an order entered that that day, the said commissioner advertised the lots for sale Before the date of said sale, C. P. Huntington, Special Receiver, moved the Circuit court of the United States for a rule against Laidley and said Thompson, special commissioner, and their counsel, Z. T. Vinson, to show cause why they should not be fined and imprisoned for contempt of the Circuit court of the United States, for proceeding to make sale of said lots in violation of the order of injunction entered in February, 1891, in the case of C. P. Huntington, Special Receiver, against John B. Laidley and others. To this rule said Laidley and Thompson filed their answers, and upon the hearing of the motion for the rule, the Circuit court of the United States dismissed the rule, and dismissed the bill and amended bills of C. P. Huntington, Special Receiver of the

Central Land Company, under the before mentioned Act of March 3rd, 1875.

The action of the court in this respect was based upon the fact that said Circuit court of the United States was without jurisdiction to enjoin the proceedings or the litigants in the State court, after the State court had once taken jurisdiction of the parties and subject matter of the litigation, prior to any proceeding by any of the parties in the Circuit court of the United States.

The Circuit courts held in each county of the State of West Virginia, are courts of general jurisdiction, and any judgment, order or decree entered therein, when the parties and the subject matter are properly before the court, is binding upon the parties and their privies in all courts, state and federal, in the United States.

Sec. 12, Art. 8, of the constitution of West Virginia, provides, 'that they (the circuit courts) shall, except in cases confined exclusively by this constitution to some other tribunal, have original and general jurisdiction of all matters at law where the amount in controversy, exclusive of interest, exceeds fifty dollars."

The conclusiveness of the action of ejectment has been defined by statute, in sec. 36, of chap. 90, of the Code of West Virginia, at p 703, of the Code of 1891, which section reads as follows:

> "Any such judgment in an action of ejectment shall be conclusive as to the right of possession established in such action, upon the party against whom it is rendered, and against all persons claiming from, through or under such party, by title accruing

after the commencement of such action, except as hereinafter mentioned."

The exception mentioned in this section applies to infants, married women, and insane persons, exclusively.

The question presented to this court for determination, by this record, is, how far will Circuit courts of the United States be permitted to enjoin and suspend litigation in State courts of concurrent jurisdiction, between the same parties, and affecting the same subject matter, when the State courts have obtained primary jurisdiction over both the parties and the subject matter?

This record shows that the litigation in the State court brought by Laidley against the Land Company, and by Laidley against Remley and others, had been prosecuted to final judgment and orders entered upon this judgment for possession of part of the property which was the subject matter of litigation, and decrees of sale for the other parts of the property involved in the actions of Laidley against Remley, and against each of the sixteen others, before any application whatever, by C. P. Huntington, either in his individual capacity, or as Special Receiver of the Central Land Company, had been made to the Circuit court of the United States.

The sole and exclusive purpose of the various bills in Equity filed in the Circuit court of the United States, by C. P. Huntington, as special receiver, and in his individual capacity, was to enjoin the execution of the judgments of the Circuit court of Cabell county, which had been rendered prior thereto in the action of ejectment of Laidley against the Central Land Company, and the actions of Laidley against Remley, and the others.

The power of the Federal court to enjoin proceedings in the State court is clearly defined by section 720 of the Revised Statutes of the United States, which section reads as follows:

> "The writ of injunction shall not be granted by any court of the United States, to stay proceedings in any court of a State, except in cases where said injunction may be authorized by any law relating to proceedings in bankruptcy."

Among the earlier cases decided by this court, construing this section, are,

Diggs vs. Wolcott, 4 Cr., 179.

Peck vs. Jenness, 7 How., 625.

Watson vs. Jones, 13 Wall., 719.

Haines et al. vs. Carpenter et al., 91 U S., 254.

Among the later cases may be cited,

Krippendorf vs. Hyde, 110 U S., 283.

Dial vs. Reynolds, 96 U. S. 340.

Adams vs. Merc. Tr. Co., and note, 15 Cir. Ct. App. p. 1.

Garner vs. First National Bank, and note, 16 Cir Ct. App., 86.

(See 2nd vol. Desty's Fed. Proc., Section 240, p. 802, 9th Ed.)

> "Prohibition extends to injunctions against proceedings to enforce a judgment obtained by a party in the State court."—Louisville T Co. vs. City of Cincinnati, 73 Fed Rep., 716.

> "Injunctions will be refused by the Federal court where a valid judgment has been obtained in the State court against a National Bank and the lien thereof is attached before the appointment of a Receiver."—Law vs. Ault, 78 Fed. Rep., 397.

See also, Southern Bank and T. Co. vs Fulsom, 75 Fed. Rep., 929.

Prohibition of the writ of injunction against State courts extends to all cases where such courts first get jurisdiction, and applies to the officers and parties of the courts, as well as to the courts themselves.

Wheeling vs. Wilders, 13 U S. App., 180, 54 Fed. Rep., 554.

> "The inhibition includes every process or order irrespective of its form, the office of which is to stay proceedings in the State court."—Ex parte Schulenburg, 25 Fed. Rep , 211.

> "They are not merely an inhibition against an injunction, but against preventing a party from conducting proceedings in a State court."—Fisk vs. U. P. Railroad Co., 6 Blatchford, 162.

> "The word proceedings includes all steps taken by the State court, or by its officers by virtue of its process from the commencement of a suit until the return of execution."—U. S. vs. Collins, 4 Blatch. 142.

> "The prohibition applies to injunctions issued to parties before the State courts."—Wagner vs Drake, 31 Fed. Rep., 851.
>
> Peck vs. Jenness, 7 How., 625.
>
> Slaughter House Cases, 10 Wall.
>
> Diggs vs. Wolcott, 4 Cr., 179.
>
> Haines vs. Carpenter, 91 U. S., 254.
>
> Dial vs. Reynolds, 96 U. S., 340.

> "Injunction will not be granted to prevent parties from taking possession of property in the custody of an officer of the State."—Watson vs. Jones, 13 Wall., 679, 719.

Mercantile Trust Co. vs. Lamoille Railroad Co. 16 Blatch., 324

"An injunction cannot issue to restrain a sale under an execution."—3 Biss., 325.
White vs. Crow, 17 Fed. Rep., 98.

The question of conflicts arising between courts of concurrent jurisdiction has arisen in many cases, and has been so frequently passed upon by this court, that we deem it unnecessary to do more than cite the decisions of this court to sustain the contention of appellees. From the cases that have arisen and been passed upon in these controversies between State and Federal courts, where each has claimed the right to adjudicate concerning the same parties and subject matter, we deduce the following proposition:

The court that has first acquired jurisdiction of the action, of the parties, and subject matter of the controversy, retains it to the end of that controversy, to the exclusion of the process of all other courts of co-ordinate jurisdiction.

Smith vs. McIver, 9 Wheat., 532.
Dietzsch vs Huidekoper, 130 U. S., 494.
French vs. Hay, 24 Wall., 253.
Haran vs. Lucas, 10 Pet. 400.
Buck vs. Colbath, 3 Wall., 334.
Riggs vs. Johnson, 6 Wall., 196.
Watson vs. Jones, 13 Wall., 679.
Covell vs. Heyman, 111 U. S., 176.
Heidritter vs. Oil Cloth Co., 112 U. S., 294.
Gumbel vs. Pitkin, 124 U. S., 131, 143.

Porter vs. Sabin, 149 U. S., 473

Moran vs. Sturgiss, 154 U. S., 256.

In re Chetwood, 165 U. S., 443, 460.

In re Johnson, 167 U. S., 120, 125.

Central National Bank vs. Stevens, 169 U. S., 432.

In the latter case, decided by this court in 1897, all the antecedent authorities were considered, and reviewed, and at page 459 of the report, the court deduces the following principle:

> " x x x the injunction was a plain interference with the proceedings in another court which had full and complete jurisdiction over the parties and the subject matter of the suit, and which jurisdiction had attached long before the suit in the Supreme court had been begun."

"It will suffice to cite a few of the cases:"

> "It is a doctrine of law too long established to require a citation of authorities, that where a court had jurisdiction, it has a right to decide every question which occurs in the case, and whether its decision be correct or otherwise, its judgment, until reversed is regarded as binding in every other court; and that where the jurisdiction of a court and the right of a plaintiff to prosecute his suit in it, have once attached, that right cannot be arrested or taken away by proceedings in another court. These rules have their foundation not merely in comity, but on necessity. For if one may enjoin, the other may retort by injunction, and thus the parties be without remedy; being liable to a process for contempt in one if they dare to proceed in the other. Neither can one take property from the custody of the other by replevin or any other process, for this would produce a conflict extremely embarrassing to the administration of justice. x x x x x The fact, therefore, that an injunction issues only to the parties before

the court and not to the court, is no evasion of the difficulties that are the necessary result of an attempt to exercise that power over a party who is a litigant in another and independent forum."—Peck vs. Jenness, per Mr. Justice Grier, 7 How., 612, 624.

"State courts are exempt from all interference by the Federal tribunals, but they are destitute of all power to restrain either the process or proceedings in the national courts Circuit courts and State courts act separately and independently of each other, and in their respective spheres of action the process issued by the one is as far beyond the reach of the other as if the line of division between them 'was traced by landmarks and monuments visible to the eye.' x x x x x x

"The exemption of the authority of the courts of the United States from interference by legislative or judicial action of the States is essential to their independence and efficiency." x x x

"It is contended by the counsel for the defendants in error, in a supplemental brief, that these principles, so long and so well settled, have been modified by some recent decisions of this court and the case of Moran vs. Sturges, 154 U. S., 256, and of Shields vs. Coleman, 157 U. S., 168, are cited in support of that contention. Such a conception of the import of those cases must have been formed from a hasty reading, for they are in perfect harmony with the previous cases, and indeed, may properly be cited to sustain the reasoning upon which those cases proceeded."

The court then proceeded to take up the case of Moran vs. Sturgiss, and the case of Shields vs. Coleman, and shows that they are in perfect harmony with the principles established in that and other cases, instead of establishing a new doctrine. These two cases have been relied upon by appellant's counsel in this case, for the purpose of establishing a

different doctrine, and one that is essential to their contention.

In this same case, Central National Bank vs. Stevens, at page 463, the point is there decided that disposes of the contention of appellant's counsel that A NEW FACT will give the Circuit court of the United States jurisdiction over the State court, where the parties and the subject matter are the same.

The court there says:

> "Nor are we able to acquiesce in the reasoning of the learned judge when he says that 'the setting aside of the judgment in the Sacket suit upon which the suit in the United States Circuit court was founded, for fraud, was A NEW FACT, occurring since the decree in the court, which gave jurisdiction in this action to enjoin proceedings thereon.' Doubtless there may be facts occurring after the rendition of a judgment which would render its enforcement inequitable; such, for instance, as payment, or a reversal thereof on appeal by a superior court. But surely a judgment and injunction rendered subsequently in another and independent forum cannot constitute such new facts unless we are prepared to concede that, as between two courts of concurrent jurisdiction, it is the judgment of the court whose jurisdiction is LAST invoked which shall be entitled to prevail."

It is contended in the appellant's bill that a new fact has been discovered which will give to the Circuit court jurisdiction to enjoin the proceedings in a State court, and that new fact was the allegation that Laidley was a clerk in his father's law office, and in that way became possessed of the knowledge of the defect in complainant's title. There is no allegation or pretense that there was any fraud practiced in procuring

the judgment rendered by the Circuit court of Cabell county in the action of ejectment which gave to Laidley the fee simple title to and the right of possession of, the property in controversy. Appellant's counsel takes the position that jurisdiction is dependent on the FIRST ACTUAL SEIZURE of the property by the State or Federal officer, acting under writs from their respective judicial tribunals. This proposition is not sustained by the authorities. On the other hand, the true rule is,

> "That actual seizure is not always necessary in order to give exclusive jurisdiction over property to a court in which a suit affecting such property is pending, if possession of such property is necessary in order to give the full relief sought in said suit." – Adams vs. Merc. Tr. Co., 15 Cir. Ct. App page 1.

The action of ejectment in the State of West Virginia, is brought for the purpose of trying the title to the property and also the right of possession. The property is not seized for the purpose of acquiring jurisdiction; the seizure is the final act and exercise of jurisdiction: And if seizure is the test, all previous steps in the action are without jurisdiction.

In proceedings IN REM the jurisdiction is acquired alone by seizure. This method of obtaining jurisdiction applies to maritime actions, and attachments

The fact that possession of the RES, is constructively in the court, control of the court, IN GREMIO LEGIS, the moment when the writ is legally served upon the defendant, has been many times decided, and is always acted upon when the court has jurisdiction of the parties, the LIS MOTA and the form of action.

In the case at bar, it appears there is no question that the Circuit court of Cabell county has jurisdiction to try the action of ejectment, to render judgment thereon, and to give force and effect to that judgment by means of a transfer of possession of the property from the defendant to the plaintiff, in execution of this judgment. The decree from which this appeal is taken says there can be no question of its having acquired such jurisdiction long prior to the institution of any suit or proceeding in the Circuit court of the United States.

In all cases affecting title to or possession of property, the court first acquiring the jurisdiction of the parties litigant has exclusive jurisdiction to the end of the controversy, and also the exclusive right to change the possession of the property affected by said proceeding. And actual seizure thereof is not necessary to the exercise of this jurisdiction.

This court, in the case of Moran vs. Sturgiss, reported in 154 U. S. at page 283, 284, says:

> "As between two courts of concurrent and coordinate jurisdiction, having like jurisdiction over the subject matter in controversy, the court which first obtains jurisdiction is entitled to retain it without interference, and cannot be deprived of its right to do so because it may not have first obtained physical possession of the property in dispute."

In Adams vs. Merc. Tr. Co., 15 Cir. Ct. App., at page 5, the court says:

> "Is actual seizure of the property necessary to the jurisdiction of the court? In my opinion, it is not. In this case I think the jurisdiction of the Uni-

ted States Circuit court for the District of Georgia, first attached to the property, because the suit in that court was first commenced, and service of subpœna made, and because (1) One of the main objects of the suit was to obtain possession of the property, and such possession was necessary to the full relief prayed by the bill.

(2) Because by the service of the restraining order enjoining the defendant company from delivering possession of the trust property to any person except a receiver appointed by this court in this cause, the court acquired constructive possession, and from the moment of the service of the restraining order, the property was in GREMIO LEGIS."—Citing Bridgeport Ice Co. vs. Meader, 18 Cir. Ct. App. 452, and Garner vs. 2nd National Bank, 16 Cir. Ct. App. 86.

"Where two suits, involving to a great extent the same subject matter, are brought respectively in a State and Federal court, that court whose process is first served obtains jurisdiction of all questions which legitimately flow out of the subject matter of the case."—1st Desty's Fed. Proc., Sec. 84, page 348, (9th Ed.), citing U. Mut. Life Insurance Co. vs. University of Chicago, 10 Biss. 191

As between Laidley and the Land Company, the judgment in the action of ejectment is conclusive upon Laidley's fee simple title to the land in controversy, and his right of possession thereof. Code of West Virginia, chap. 90, Sections 2-4-5-7-9-11-13-23-27-28-29-35.

(Sec. 35.) "Any such judgment in an action of ejectment shall be conclusive as to the right of the possession established in such action, upon the party against whom it is rendered, and against all persons claiming from, through, or under such party, by title

accruing after the commencement of such action, except as hereinafter mentioned.

The exception referred to in the above quoted section, is found in the following section, (36), and it provides simply that "If any person against whom such judgment is rendered shall be at the time of the judgment, an infant, married woman, or insane, the judgment shall be no bar to an action commenced within five years after the removal of such disability."

We summarize the points discussed in the foregoing brief into the following propositions, viz:

I.

The State court obtained jurisdiction of the controversy between Laidley and the Land Company respecting the title to, and the right of possession of, the land which was the subject matter of the suit, in November, 1882; that being the time when all the parties were brought into court, and the defendant entered its appearance and plead to said action — Record, page 151.

The first steps taken in the Federal court were November 11th, 1890,—(Record, page 636) eight years after the institution of the proceedings in the State court, and fifty-nine days after judgment had been rendered by the State court. (The stay of proceedings granted the Land Company by said State court to allow it to apply for a writ of error was sixty days.)

On the equity side of the State court, jurisdiction was taken by it in June, 1887. (Record, page 222.) This litigation was determined by the Supreme court of the State February 11th, 1889.—Record, page 335.

II.

The State court having obtained jurisdiction of the parties and the subject matter, prior to the institution of any suit or proceeding in the Circuit court of the United States, affecting the same, is entitled to hold it until the end of that controversy, free from any interference by injunction or otherwise, from the Federal court.

III.

Federal courts have no power or jurisdiction to enjoin proceedings in a State court, when the jurisdiction of the State court was first obtained over the parties and the subject matter, except in bankruptcy cases.

IV.

Actual seizure of the property is not essential to give complete jurisdiction over the subject matter, after the parties litigant are before the court, whenever the transfer of the possession thereof is necessary to give adequate effect to any judgment which may be rendered concerning the same.

We desire to emphasize the necessity of preserving the independence of the Judiciary, both State and Federal, in our dual form of government. The efficiency of every judicial tribunal is dependent upon the integrity and finality of its decrees and judgments, and if it would instil in the mind of the litigant and the public that respect which is due to the arbiter of disputes, it should set the example by respecting the judgments of other courts of equal dignity and co-ordinate powers. It should decline absolutely to entertain parties whose grievances had been adjudicated by, or were the subject matter of pending litigation in another forum. The

policy of the law is to end controversies and not to protract them interminably. The administration of law will degenerate into a farce whenever independent courts of general jurisdiction enter into an unseemly scramble over the possession of property which is the subject matter of the suit. They would become petty tyrants, fighting to maintain a questionable prerogative, and bring reproach upon the whole judiciary system. To keep the Federal and State courts separate and distinct in their respective spheres of action becomes an imperative necessity, and wherever a conflict is imminent, all questions which might arise in that conflict should be surrendered and submitted to that court acquiring original and primary jurisdiction. This has been the universal rule as laid down by this court, and we can see no reason for departing from a principle established in necessity, in this particular case.

Respectfully submitted,

W. R. THOMPSON.
W. K. COWDEN.
Z. T. VINSON.

No. 105.
Brf. of Brown for Appellees.

Office Supreme Court U. S.
FILED
JAN 15 1900
JAMES H. McKENNEY,
Clerk.

Filed Jan. 15, 1900.

IN THE

Supreme Court of the United States.

C. P. HUNTINGTON, RECEIVER, &c.,

vs.

J. B. LAIDLEY AND OTHERS.

October Term, 1899. No. 105.

BRIEF OF BROWN, JACKSON & KNIGHT, AND W. S. LAIDLEY, FOR APPELLEES.

IN THE

Supreme Court of the United States.

C. P. HUNTINGTON, RECEIVER, &c.,

vs.

J. B. LAIDLEY AND OTHERS.

October Term, 1899. No. 105.

BRIEF OF BROWN, JACKSON & KNIGHT, FOR THE APPELLEES.

This case is presented upon the following question, certified to this Court as hereinafter shown:

"Is this Court (the U. S. Circuit Court for the District of West Virginia) without jurisdiction of this cause because of the pendency in the State court prior to the commencement of this suit, of the action of ejectment in which John B. Laidley was plaintiff and the Central Land Company of West Virginia was defendant, which was begun in the Circuit Court of Cabell County, West Virginia, on the first Monday in April, 1882, and the other actions of ejectment brought prior to this cause in said State court by the said John B. Laidley as plaintiff, in relation to the property in question in this suit; and of the Chancery

Cause in which the Central Land Company of West Virginia was complainant and John B. Laidley and others were defendants, which was brought in said State court prior to the commencement of this cause?"

This submission calls for a statement of the several causes mentioned, and of the subject matter of the litigation.

STATEMENT:

Feb. 25th, 1870, *Sarah H. J. Pennybacker*, being seized of 240 acres of land in Cabell County, West Virginia, attempted to convey same (one acre excepted) to one *C. P. Huntington;* her husband joining in the deed. This deed was, in fact, *void* as to her, because of defects in its execution, but good as to him, the husband.

By deed of Oct. 16th, 1871, *Huntington* attempted to convey to the *Central Land Co.*, a West Va. Corporation.

Under the laws of West Virginia, then in force, the husband took by the courtesy, an estate for his life in the lands of the wife. In 1881 the husband, in this case, died, and his estate terminated; and with it, the right of *Huntington* and his vendee.

By deed of Jan. 26th, 1882, *Mrs. Pennybacker*, ignoring her defective deed to Huntington, conveyed the land to *J. B. Laidley*. Apl. 1882, Laidley, a citizen of West Virginia, instituted in the State court ejectments against the Land Co. and seventeen parties, its vendees of parts, also, all citizens of West Virginia. The suit against the Company was first tried Dec. 1884. The sole question involved; was, *as to the validity of the deed to Huntington.*

The trial court instructed, that the deed to *Huntington* was valid, and passed all interest of the grantors, wherefore *Laidley* could take nothing by his subsequent deed; and, gave judgment for the defendant; whereupon, *Laidley* took the case by writ of error to the Supreme Court of Appeals of the State. The defendant Co. recognizing the worthlessness of the deed and the inevitable reversal of the judgment, in June 1887, filed its bill on the Equity side in the State court against Laidley and *Mrs.* Pennybacker; alleging, that *Mrs. Pennybacker* was imposed upon by Laidley and induced to sell to him at an inadequate price, and fraud generally on the part of Laid-

ley; that Laidley by the deed to him, *took* the legal title *in trust* for the use of the Company; and, praying that he be adjudged to convey the title so acquired, to the Company; or, in default of that, that the purchase money be decreed to it.

Pending this bill, Nov. 1887, the Supreme Court of Appeals reversed the judgment in ejectment, holding the deed from Mrs. Pennybacker *void* as *to her*, but *good* to pass the *life estate of her* husband; that, the husband being tenant by the courtesy under, and *not* adverse to, her, *Huntington* and the *Land Co.*, his successors, held in like manner; and that their possession was in support of, and not hostile to her estate; that by the death of the husband the estate by courtesy terminated; and, that Laidley, by virtue of the deed to him, was vested with the title, and entitled to recover the possession; in brief, that the deed was void as to the wife, but good as to the husband; that by it *Huntington* took the husband's life estate, subject to a remainder in the wife, which remainder by the wife's deed to *Laidley*, became vested in him, and which after the death of the husband he was entitled to recover in that action. (See *Laidley* v. *Land Co.*, 30 W. Va. 505).

On the rendition of this decision, the *Land Co.* filed an amended bill (Jan. 1888) in its chancery suit, reiterating and enlarging upon its supposed equities; but, upon answer by Laidley denying all allegations of imposition and fraud, and upon many depositions disproving same, the court, after full hearing, adjudged against the Company, and dismissed its bills; whereupon, it appealed to the Supreme Court of the State.

Pending this appeal in the chancery suit, the ejectment came on again for trial (May '89); whereupon, the *Land Co.* applied for a *stay* pending the decision of its said appeal; alleging as cause, that the deed to *Huntington* being void and the legal title vested in *Laidley* by the subsequent deed, they could not defend at law, but were limited to such relief, if any, as they might yet be accorded in the chancery cause theretofore decided against it, but then pending on appeal. This application was made under Sec. 6 of Ch. 136 of the Code of W. Va., *i. e.*

"Whenever it shall be made to appear to a Circuit Court, or to the judge thereof in vacation, that a stay of proceedings

in a case therein pending, should be had, until the decision of some other action, suit or proceeding in the same, or another Court, such court of judge shall make an order staying proceedings therein, *upon such terms as may be prescribed in the order.*"

The Court granted the motion; but, under the provision of the statute so invoked, put the defendant upon terms. See R. 340.

"J. B. Laidley, Pl't'f., v. The Central Land Co. of W. Va. Deft. } In Ejectment.

and

J. B. Laidley, Pltf. vs. The Central Land Co. of W. Va., Deft. } In Ejectment. Consolidated.

This day came the plaintiff, by his attorneys, and the defendant, by its attorneys; and thereupon the defendant moved the Court for a stay of proceedings in these causes until the decision of the Supreme Court on the appeal hereinafter mentioned, upon the ground that there is pending in the Supreme Court of appeals in this State an appeal by the defendant from a decree of this Court in the Chancery cause of the Central Land Company of West Virginia against said J. B. Laidley and others, and read in evidence in support of said motion the record of said chancery suit and of the appeal thereon; and the plaintiff resisted said motion, and insisted upon a trial of said action of ejectment, and the Court, having fully considered the matters arising upon said motion, doth decide to stay said actions until the decision of the appellate court in said chancery cause, *upon condition and not otherwise, that said defendant, The Central Land Company of West Virginia, agrees here in open Court that judgment be at once entered for the plaintiff in said actions of ejectment for the estate in fee-simple in the lands in the declarations in said actions described, without further defense, in event the decree aforesaid in said chancery suit be affirmed upon said appeal so far as it relates to the title in the land,* but judgment so to be entered to be without prejudice to the right of the defendant, if any it has, to compensation for any improvements it may have placed upon the lands in controversy; and *thereupon the said defendant in open court accepted said stay of proceedings in said actions of ejectment upon the terms aforesaid.*"

Feb. 11th, 1889, the Supreme Court decided the appeal; affirming the decree referred to in the above order; holding,

the deed from *Mrs. Pennybacker* to *Huntington void* in *equity* as well as *at law*, and that it passed nothing as to her; that no equities whatever intervened between *Laidley* and the estate, in favor of *Huntington* or *his vendee;* and, that the alleged equities between *Laidley* and *Mrs. Pennybacker*, even if any existed, which did not appear, could not avail the *complainant*. 32 W. Va. 134.

Thus adjudged against by the Supreme Court, both as to the *legal* and *equitable* title, the Company sought, through *Mrs. Pennybacker*, to avail themselves of the alleged equities between *her* and *Laidley;* and in her name was filed a bill against Laidley, reiterating in identical words the old charges of imposition and inadequacy of price contained in the first bill. This bill also was fully answered by *Laidley*, depositions taken, and, after full hearing the cause adjudged in favor of *Laidley*, and, on appeal, dismissed by the Supreme Court. 33 W. Va. 624.

It might have seemed that the litigation had by this time exhausted itself, but instead; on the 12th day of Sept., 1890, the Company, notwithstanding its agreement, again renewed the fight in the action at law, this time based on a newly conceived notion, viz: That the decision of the Supeme Court, in holding the deed void, violated the provision of the Constitution of the United States against state legislation impairing the obligation of contracts. This defense also was overruled by the lower court; and judgment rendered for *Laidley;* and, a writ of error refused to the Company by the Supreme Court of the State upon the ground that the judgment was "plainly right."

To this decision by the Supreme Court of Appeals of the State, the Company obtained a writ of error from this Court. (U. S. Supreme Court) which, later holding that no federal question was involved, dismissed the writ and left the judgment of the State Court in full force. Again, one would have supposed the litigation ended, but not so.

In order to escape the force and effect of these several adjudications; pending the case in U. S. Sup. Court as above, *the Company, a citizen of W. Va.*, filed in the U. S. Circuit Court for the District of West Virginia, its bill against *Laidley*, another *citizen of W. Va.;* again reiterating all the matter of its former bill in the State Court, about imposition,

fraud, etc.; and further, its old allegations as to the decision of the State court impairing the obligation of a contract; and, alleging that by reason of the latter charge, jurisdiction existed in the federal court to enjoin the execution of the judgment of the State court, whereupon the U. S. District Judge awarded the injunction.

The subsequent decision by the Supreme Court of the U. S., that the judgment of the State court, annulling the deed, did not raise a federal question, left the Federal Court without a shadow of jurisdiction of this last mentioned suit.

The case then stood:

(1) A judgment by the State Court in favor of *Laidley*, on the *law side;* confirmed by the Supreme Court of the State.

(2) A *decree* for *Laidley*, adjudging the non-existence of any equities in favor of the Company on the *Equity side;* likewise confirmed by the Supreme Court of the State.

(3) The decision of the Supreme Court of the United States, that no federal question was involved, nor any ground for interference by a Federal Court.

Having tried all sides of all Courts with uniform result, it would again have seemed that the end of the rope had been at last reached, but not so.

The resourcefulness of the defendant suggested the *creation* of a *new condition;* and thereby, to supercede all former judgments, decisions and decrees. Knowing that an alienation of title to a non-resident could not avoid antecedent judgments and decrees, nor confer jurisdiction upon Federal courts, the happy idea was conceived of bringing a friendly suit in the U. S. court by a non-resident stockholder, ostensibly to wind up the *West Virginia* corporation; and, as an incident, for a Receiver of the Company; to appoint a *non-resident* Receiver, and thereby manufacture as it were the coveted jurisdiction.

The bill for the Receiver was filed on Nov. 11th, 1890, the last one of the sixty days stay granted by the State court to its judgment at the instance of the defendant to enable it to apply for a writ of error. The injunction suit by the Receiver was brought a few days later, Laidley enjoined from the benefit of his judgment and of the decisions in his fa-

vor rendered by the State courts; and all the matters involved in the former litigation realleged, and again attempted to be relitigated in the Federal court, all with a studied exclusion from the bill of the slightest allusion to any pre-existing litigation.

The State court, notwithstanding this injunction, after waiting several years, directed its officer to proceed with the execution of its judgments; whereupon, at the instance of *Huntington, Receiver*, a rule was issued by the Federal court against *Laidley* and the officer, to show cause, if any they could, why they should not be fined and imprisoned for contempt. Upon answer to the rule, and full hearing upon the papers of the cause, the Circuit Judge of the U. S. Court, for that Circuit, June 25th, 1898, dissolved the injunction, quashed the rule and dismissed the bills, under § 5 of the Act of 1875, as in violation of the provisions of § 720 U. S. Rev. Statutes. A few hours later, the District Judge, who was not present at the hearing, superseded the order of the Circuit Judge, re-instated the injunction, certified a single question to this Court, and awarded this appeal.

The order of Judge Goff, dissolving the injunction and dismissing the bill, is the order here appealed from; and its correctness, the question submitted to this Court for decision.

We thus, have a judgment of the State court in favor of Laidley for the recovery of the title and possession of the land, and the award of a writ *habere facias possessionem*, all in a cause between two citizens of the same State; and further, an adjudication by this Court that no federal question was involved in the controversy; an injunction by the Federal court to the execution of the writ possession; a decree dismissing the bill; and this appeal from that decree.

We respectfully submit that to state the case, is to affirm the Circuit Court,

Or to state the case more specifically, we have:

First:

A judgment at law in ejectment in the State court by a citizen of West Virginia against a West Virginia corporation, upon the title and for the possession of land in that State; and the award of a writ of *habere facias possessiomem*.

Second:

A *decree* in favor of Laidley on the Chancery side in the same Court, against same defendant, adjudging that no equities existed against said judgment.

Third:

Both judgment and decree *affirmed* by the Supreme Court of the State.

Fourth:

The judgment of the Supreme Court of the United States, that no federal question was involved.

Fifth:

The decree here appealed from, dismissing the bill enjoining the execution by the State court of its own judgment and decree.

All the above matters fully appeared in the record at the date of this decree, not disputed or questioned, (see the decree R. p. 648) and the cause was heard thereon. The record further fully disclosed the sole purpose of the bill *for* a Receiver, to be to provide a way for getting jurisdiction for a Federal court; and the sole purpose of the bill *by* the Receiver, to be, the enjoining of the execution of a judgment of a State Court of competent jurisdiction, in the teeth of the federal statutes. The duty of the Court became at once apparent, and its decision was prompt. By Sec. 720 U. S. Rev. Statutes it is provided:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

And by Sec. 5 of Act of Mar. 3, 1875:

Sec. 5. "That if, in any suit commenced in a Circuit Court of the United States, it shall appear to the satisfaction of said Circuit Court, at any time after such suit has been brought or removed thereto, that such suit does not really substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removeable under this act, the said Circuit Court shall proceed no farther therein, but

shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just."

It would seem unnecessary to cite authority for the Court's action; but, if needs be, mention of the case of *Central Nat. Bank* v. *Stevens*, 169 U. S. 432, with the authorities there cited, would seem fully sufficient. This Court in that case said:

"It is a doctrine of law, too long established to require a citation of authorities, that, where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, till reversed, is regarded as binding in every other court; and that, where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right can not be arrested or taken away by proceedings in another court. These rules have their foundation not merely in comity, but on necessity."

Again;

"State Courts are exempt from all interference by the federal tribunals, but they are destitute of all power to restrain either the process or proceedings in the national courts. Circuit Courts and State courts act separately and independently of each other, and in their respective spheres of action and process issued by the one is as far beyond the reach of the other as if the line of division between them 'was traced by land marks and monuments visible to the eye.' Appellate relations exist in a class of cases between the State courts and this Court, but there are no relations between the State courts and the Circuit Courts."

Again;

"In Story's Equity Jurisprudence, vol. 2 § 900, it is said, referring to the power sometimes exercised by Courts of Equity, to restrain parties within their jurisdiction from proceeding in foreign Courts: 'There is one exception to this doctrine which has been long recognized in America, and that is that the State Courts cannot enjoin proceedings in the Courts of the United States, *nor the latter in the former.*'"

Again;

"It is contended by the Counsel for the defendants in error, in a supplemental brief, that these principles, so long and so well settled, have been modified by some recent de-

cisions of this Court, and the case of *Morgan* v. *Sturges*, 154 U. S. 256 (38 : 981), and of *Shields* v. *Coleman*, 157 U. S. 168 (39 : 660), are cited in support of that contention. Such a conception of the import of these cases must have been formed from a hasty reading, for they are in perfect harmony with the previous cases, and, indeed, may properfy be cited to sustain the reasoning upon which these cases proceeded."

It may be urged that new allegations of "fraud" were added by amended bill in 1894, wherefore it may be claimed that jurisdiction was obtained independent of the original grounds for injunction.

As already shown, all alleged equities between the Company and Laidley had already been adjudicated in the Courts, against the Company. It was bound to put in its *whole* case in that bill. The allegation by the *Receiver*, in his amended bill, that equities existed which *he* did not sooner know of, is wholly insufficient to authorize a relitigation. He succeeded to the *Company*, bound in like manner as it was bound, to rights and equities circumscribed in like manner as before the Receivership. *His* want of knowledge of the existence of other supposed equities could not supply the neglect of the Company to assert them at the proper time in *its* suit in the State court; nor entitled *him* as *Receiver* to evade a decree which his corporation could not evade; to avail of lack of knowlege on *his* part, when it does not appear that any such lack of knowledge existed on the part of the corporation, when it filed *its* bill upon which the adverse decree of the State court was rendered, or within three years thereafter within which it might have filed its bill of review.

Again the affidavit for the amendment does not meet the requirements of the 29 Equity Rule; but if it did, the amendment itself does not add sufficient matter to maintain the bill; as amended, it contains no allegation entitling the complainant to relief.

Federal courts are not established as tribunals for review of final judgments of State courts, nor has it been the inclination of this Court to permit them to be converted into such by the ingenuity of counsel.

Here, in a controversy between two citizens of the same State, the plaintiff has been adjudged title in a tract of land;

the defendant to have no right at law or in equity in the same: and a writ of possession awarded. The Federal Court has been asked to review and annul these judgments, and to enjoin the writ because of the citizenship of a Receiver procured for the purpose after the rendition of the judgments by the State court, and upon the allegation that *he* did not know of certain alleged matters, essential to, but omitted from the Company's former bill, and which, if alleged, he thinks might have brought about a different judgment.

Had the supposed new facts come to the knowledge of the Company after the date of the decree of the State court, its remedy would have been by bill of review in that court; but it is not, as already shown, even alleged that the *Company* was not then fully advised, and the affirmative of the contrary is upon it, both by allegation and proof, to show the fact; this it does not pretend to do, nor does the Receiver, to allege even want of full knowledge upon its part. *His* ignorance cannot be substituted in place of the knowledge of the real party.

But even had the facts alleged, in fact, existed; and, had the Company been in ignorance of them at the date of its former suit, still it would not, after the statutory period for a bill of review, be permitted to escape the result of its neglect, by appeal to a Federal court.

While not involved in the question submitted to this Court, it is but fair to the memory of Mr. Laidley, now deceased, to state that the allegations of fraud, so attempted to be thrust in the case, were without shadow of foundation; denied under oath in the answers, disproved by the depositions (omitted by the appellant from the record) and further disproved by the perpetual silence of the Company which had its office during all those years, and, in fact, did its business, and had its vigilant agents and attorneys residing in, the same County; and especially is the recklessness and falsity of the charges apparent when it is considered that the supposed new facts were, if true, such as could not be hid under a bushel, but were of necessity from their alleged character fully known in the community. The allegation as to "want of knowledge" in the premises was advisedly confined to Mr. Huntington, the Receiver; resident of New York.

We respectfully submit the following propositions as conclusive of this case:

(1) That Federal courts have no jurisdiction to restrain State courts in the execution of their judgments and decrees.

U. S. Revised Statutes Sec. 720, *Central Nat. Bank v. Stevens, 169 U. S. 432 and cases cited.*

(2) The jurisdiction of the State court once attached continues until execution executed.

Merritt v. Am. Steele Barge Co., 24 C. C. a 530.
White v. Crow, 17 Fed. R. 98.
U. S. v. Collins, 4 Blatch. 142.
Exparte Schulenburg, 25 Fed. 211.
Watson v. Jones, 13 Wal. 679–719.
Watson v. Bondurant, 2 Woods 166.

(3) That the Federal Courts have no jurisdiction to review judgments and decrees of State Courts, where rendered within the scope of their jurisdiction.

Central Nat. Bank v. Stevens, 169 U. S. 432 and cases cited.

(4) That it is the duty of the Federal Court, at *whatever* stage of the proceedings want of jurisdiction may appear, to dismiss a cause, of its own motion, if needs be, as done in this case.

Act, March 3, 1875, Sec. 5.

(5) That the collusive appointment of a non-resident Receiver for a West Virginia corporation, for the purpose of giving jurisdiction to a Federal court over a citizen of that State cannot avail.

Williams v. Nottawa, 104 U. S. 209.
Farmington v. Pillsbury, 114 U. S. 138.

(6) That the Rule in *White v. Ewing 159 U. S. 36* does not apply in a case like that at bar, nor where the collusive purpose of the appointment and proceedings is patent, nor

where the State court first acquired and has jurisdiction over the subject matter.

Watson v. Jones, 13 Wal.
White v. Crow, 18 Fed. R. 98.

(7) That the allegation that the *Receiver* has acquired knowledge of facts not theretofore known to *him*, cannot entitle him to relitigate matters theretofore adjudged by a State court against his Corporation, nor authorize him to substitute an original bill in the Federal court for a bill of review in the State court, barred to his Corporation by its neglect.

Thus far has been discussed the status of the main case. The injunction was awarded, as well, to the execution of the seventeen judgments recovered by Laidley against lot owners, vendees of the Company. All these stand identically in the same situation, save that the defendants having filed their account for improvements, Laidley, under the statutes of West Virginia, consented, in lieu of possession, to take the value of the lots in their unimproved condition, which was adjudged a lien, and judgment entered for the sale of the lots to enforce the same. As stated, their status is identical, except as to form of executing the judgments, and all said in regard to the main suit, applied in like manner to these.

MOTION TO DISMISS.

We further submit:

That the Judge of the District Court cannot certify a question decided in his absence by the Circuit Judge or award an appeal to his decree, or continue in force the injunction dissolved by the Circuit Judge. And, upon this ground, we move, on behalf of the appellees, that the appeal be dismissed.

Also upon further ground:

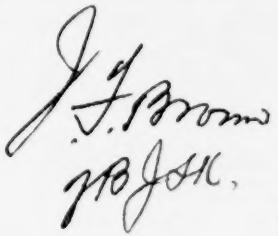
That the decree of dismission involved the consideration and determination of the legal effect and conclusiveness of the several judgments and decrees of the State courts, whereupon the case falls within the rule laid down in *Blythe* v. *Hinckley*, 173 U. S. 501. The appeal should have been to the Circuit Court of Appeals; not to this Court.

We append, for the convenience of the Court, a statement in chronological order of the several proceedings involved.

Respectfully,

BROWN, JACKSON & KNIGHT,
W. S. LAIDLEY.

Charleston, W. Va.,
January 10th, 1900.



APPENDIX.

DEEDS.

Pennybacker to Huntington,	Feb. 25, 1870	R 351.
Huntington " Land Co.	Oct. 16, 1871	R 353.
J. M. Pennybacker's death, (husband),	May 5, 1881	R 371.
Mrs. Pennybacker to Laidley,	Jan. 26, 1882	R 350.

LITIGATIONS IN STATE COURTS.

J. B. Laidley
v.
Central Land Co. of W. Va. } In Ejectment, Cabell Cir. Ct.

Declaration and Notice, to Apl. Rules 1882, R. 143.
Notice quashed, May 24, 1882, R. 146.
New Declaration and Notice to Oct. Rules 1882, R. 151.
Trial and Judgment for Deft., Dec. 22, 1884, R. 155-156.
W. of E. to State Sup. Ct. App., Oct. 23, 1886. R. 143.
Reversed and Remanded, Nov. 26, 1887, R. 338.
30 W. Va. 505.
Trial stayed on Deft's. agm't. to confess in event of loss of chancery suit, Jan. 16, 1888, R. 340.
Retried, and judg. for Plff. Laidley, Sept. 12, 1890, R. 347.
Sixty days stay of execution to enable Deft. to obtain W. of E. R. 347.
W. of E. refused by Sup. Ct. App., because "judgment was plainly right," R. 335.
W. of E. granted by U. S. Sup. Ct., July 7, 1890, R. 407.
W. of E. Dismissed by U. S. Sup. Ct. (opinion), Feb. 26, 1896, 159 U. S. 103. R. 414.
(For the other ejectments see Record 416 *et seq.*)

Central Land Co. of W. Va. vs. J. B. Laidley. — In Chancery. Cabell Circuit Court.

Bill filed, June Rules, 1887, R. 222.
Amended Bill, March 21, 1888, R, 233.
Final Decree against Land Co., May 14, 1888, R. 335.
Appeal and sup. allowed, Aug. 20, 1888, R. 221.

Affirmed by Sup. Ct. of App., Feb. 11, 1899.
32 W. Va. 134.

S. H. G. Pennybacker, v. J. B. Laidley. — In chancery In Cabell Cir. Ct.

Decided in favor of Laidley, by Sup. Ct. of App., Mar. 25, 1890. 33 W. Va. 624.

LITIGATION IN THE FEDERAL COURTS.

Gates, Huntington, et als., v. Central Land Co. — In Equity.

Bill filed, and Rec'r appointed, Nov. 11, 1890, R. 636, 638.
Huntington substituted as Rec'r, Dec. 16, 1890, R. 640.

Central Land Co. of W. Va., v. J. B. Laidley.

Bill filed, and injunction granted, Nov. 11, 1890, R. 582, 622.
Injunction dissolved, and bill dismissed, June 25, 1898, R. 635.

C. P. Huntington, Receiver, v. J. B. Laidley, et al. — In Equity.

Bill filed, and inj. granted, Feb. 28, 1891. R. 1.
Demurrer overruled, Jan. 12, 1892. R. 34.

An. nded bill, Jan. 26, 1894, R. 43.
Plea and answer filed, Feb. 26, 1896, R. 132.
2nd amendment to the bill, Dec. 21, 1896, R. 514.
Laidley's amended plea filed, July 13, 1897, R. 521.

Rule for contempt against Laidley et als., Dec. 17, 1897, R. 650.
Answer of Laidley to the Rule, Dec. 20, 1897, R. 574.

Decree by Circuit Judge discharging the Rule for contempt, and dismissing the bill, June 25, 1898, R. 582, 647.
Appeal and supersedeas by the District Judge, to Sup. Ct. of the U. S., June 25, 1898, R. 652.
which is the appeal now for decision.

J. J. Brown
W. B. Jack

No. 105, October Term, 18

IN THE

SUPREME COURT

—OF THE—

UNITED STATES.

C. P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia,

vs.

JOHN B. LAIDLEY, et al.

IN THE

SUPREME COURT

—OF THE—

UNITED STATES.

C. P. HUNTINGTON, as Special Receiver of the Central Land Company of West Virginia,

vs.

JOHN B. LAIDLEY, et al.

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of defendants in the above styled cause respectfully represents:

That in the hearing of this case before the Circuit Court of the United States the only question presented for argument and decision was the question of the right

and authority of the Federal Court to enjoin the proceedings then pending in the State Court. This question was raised on the answers of the defendants in the contempt proceedings instituted against them for an alleged violation of the injunction prohibiting them from making sales under an order of the State court. This point was decided in favor of the respondents in the contempt proceeding, and this position was sustained by this Honorable Court in its opinion rendered at the present term.

At the time the Circuit Court rendered its decision discharging the respondents in the contempt proceeding, that Court of its own motion directed the case to be dismissed from the Federal Court, on the ground that that court had no jurisdiction in that proceeding. These defendants insisted upon the Circuit Court allowing the case to be heard upon its merits, and requested the Court to enter no order dismissing the case, but that order was entered over the protest of the defendants, upon the Court's own motion.

Your petitioners further represent that they are advised by the Clerk of this Court that the cost of this appeal will be taxed against them, unless otherwise directed by this Honorable Court.

Your petitioners further represent that the case was dismissed without their having made any motion for that purpose, and without their insisting on it, and over their protest; and that they ought not to be subjected to the payment of the cost of this proceeding, as they were not responsible in any way for the Court's action dismissing the case from the docket.

Your petitioners further say that the one point insisted on by them in the Circuit Court, was their exemption from punishment on the charge of violating the injunc-

tion. This position was sustained by the Circuit Court, and affirmed by this Honorable Court.

Your petitioners, being remediless save in this Honorable Court, would therefore pray that the cost of this appeal be not taxed against them, and that the Clerk of this Court be directed to incorporate in the mandate of this Court that the cost of the appeal abide the general result of the suit, and for such other relief as they may be entitled to, and they will ever pray.

To Messrs. F. B. Enslow and Maxwell Evarts, Counsel for the Plaintiff.

Gentlemen:

You will please take notice that the foregoing petition will be filed in the Supreme Court of the United States, on the 16th day of April, 1900, and the Court will be asked to take action thereon in accordance with the prayer of said petition.

Very Respectfully,

Counsel for Parties.

HUNTINGTON *v.* LAIDLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

No. 105. Argued January 18, 19, 1900. — Decided March 19, 1900.

In order to maintain a direct appeal to this court from the Circuit Court of the United States under the act of March 3, 1891, c. 517, § 5, as to the jurisdiction of the court below, the record must distinctly and unequivocally show that that court sends up for consideration a single and definite question of its jurisdiction; but this may appear either by the terms of the decree appealed from and of the order allowing the appeal, or by a separate certificate of that court.

A certificate of a question of jurisdiction of the Circuit Court of the United States, under the act of March 3, 1891, c. 517, § 5, may be made by the District Judge, even if the decree was rendered by the Circuit Judge.

The question whether proceedings concerning the legal or equitable title to land, begun and concluded in the courts of a State, before the commencement of a suit in the Circuit Court of the United States to charge the land with a trust, afford a defence to this suit, is not a question affecting the jurisdiction of that court, but a question affecting the merits of the cause, and as such to be tried and determined by that court in the exercise of its jurisdiction; and if that court, of its own motion, and without hearing the parties on the question of its jurisdiction, enters a final decree dismissing the suit under the act of March 3, 1875, c. 137, § 5, upon the ground that by reason of the proceedings in the courts of the State the suit does not really and substantially involve a dispute or controversy properly within its jurisdiction, and an appeal is taken to this court upon the question of jurisdiction only, under the act of March 3, 1891, c. 517, § 5, the decree must be reversed and the cause remanded for further proceedings

THE statement of the case will be found in the opinion of the court.

Mr. Maxwell Evarts for appellant. *Mr. F. B. Enslow* was on his brief.

Mr. Z. T. Vinson and *Mr. Holmes Conrad* for appellees. *Mr. W. R. Thompson* and *Mr. W. K. Cowden* were on the brief.

Mr. J. F. Brown and *Mr. W. S. Laidley* filed a brief for appellees.

Opinion of the Court.

MR. JUSTICE GRAY delivered the opinion of the court.

This is a direct appeal to this court, under the act of March 3, 1891, c. 517, § 5, from a decree of the Circuit Court of the United States for the District of West Virginia, dismissing for want of jurisdiction a bill in equity filed by Collis P. Huntington, a citizen of New York, as special receiver of the Central Land Company of West Virginia, a corporation of West Virginia, against John B. Laidley, a citizen of West Virginia, and against citizens of other States, to charge a tract of 240 acres of land in that State with a trust.

The question of jurisdiction, and the aspect in which it was presented to the court below, will be best understood by first giving an outline of the undisputed facts, and of the proceedings in this case, as gathered from the voluminous record transmitted to this court.

On February 25, 1870, Sarah H. G. Pennybacker, a married woman, owning a tract of land of 240 acres in West Virginia, executed with her husband a deed thereof, with a separate acknowledgment by each, to Huntington, who on October 16, 1871, conveyed his title therein to the Central Land Company; and that company afterwards, and before April, 1882, sold parts of the tract to one Remley and to other persons. The sufficiency of Mrs. Pennybacker's acknowledgment was doubted; and on January 26, 1882, she, having become a widow, executed and acknowledged, in due form of law, a deed of the tract to Laidley. All those deeds were duly recorded.

In April, 1882, Laidley brought, in the circuit court of Cabell county in the State of West Virginia, an action of ejectment against the Central Land Company to recover the tract of land; and a verdict and judgment obtained by the Central Land Company in that action were in November, 1887, set aside and reversed by the Supreme Court of Appeals of West Virginia, and a new trial ordered, upon the ground that Mrs. Pennybacker's acknowledgment to her first deed was defective. 30 West Virginia, 505.

Opinion of the Court.

The Central Land Company filed in the county court in June, 1887, a bill in equity, and in March, 1888, an amended bill, against Laidley, Huntington, Mrs. Pennybacker and the several grantees of the Central Land Company, alleging that Laidley obtained his deed from Mrs. Pennybacker by fraud, and held the land in trust for the Central Land Company, and should be restrained from proceeding with the action at law. The county court dismissed that bill, and its decree was affirmed in February, 1889, by the Supreme Court of Appeals. 32 West Virginia, 134.

In September, 1890, the action of ejectment of Laidley against the Central Land Company (proceedings in which had been stayed to await the decision in the equity suit) was tried again in the county court, and a verdict and judgment returned for Laidley. A petition for a writ of error to review that judgment was afterwards denied by the Supreme Court of Appeals; and on March 26, 1891, the county court issued a writ of possession in favor of Laidley. A writ of error from this court to the Supreme Court of Appeals was sued out by the Central Land Company on July 7, 1891, and was dismissed by this court for want of jurisdiction on June 3, 1895. 159 U. S. 103.

In November, 1883, Laidley brought in the county court separate actions of ejectment against Remley and the other persons who had taken deeds from the Central Land Company of parts of the tract of 240 acres. In each of those actions, the defendant filed a claim for improvements, and Laidley (pursuant to the provisions of the Code of West Virginia of 1891, c. 91, §§ 10–13) elected to allow the improvements, and on September 10, 1890, took judgment for the value of the lot recovered, with an order for its sale, instead of a judgment for the possession of the land, and for the transfer of the title. On December 15, 1890, the court appointed special commissioners to make the sales. On October 21, 1897, the court substituted, instead of those commissioners, William R. Thompson, and he advertised the lots for sale.

Meanwhile, on November 11, 1890, Huntington and others,

stockholders in the Central Land Company, had filed in the Circuit Court of the United States a bill in equity against the company to wind up its affairs, because its charter was about to expire; and on the same day the court appointed Frank B. Enslow temporary receiver to take possession of all its property. On December 16, 1890, Enslow reported to the court that he had taken possession of all the property of the company, including the tract of 240 acres; and the court appointed Huntington special receiver, and directed Enslow to turn over all its property to him, which was accordingly done.

On February 28, 1891, Huntington, as such special receiver, filed in the Circuit Court of the United States against Laidley, and against sundry persons claiming under grants from him, the bill in the present case, which set forth the conveyances from Mrs. Pennybacker to Huntington, from him to the Central Land Company, from that company to Remley and others, from Mrs. Pennybacker to Laidley, and from him to the other defendants, and the appointment of Huntington as receiver; alleged that the deed from Mrs. Pennybacker to Huntington was duly acknowledged by her, and was valid; and that Laidley's acts, in obtaining the later deed from her to himself, and in conveying parts of the land to other persons, were in fraud of the rights of the Central Land Company, and created a cloud upon the title of that company and of those claiming under it; and prayed for an injunction against the defendants from interfering with the plaintiff's possession of the tract of 240 acres, and from doing any act tending to affect his title, or to cast a cloud upon it, and from proceeding to enforce any claim to, or taking possession of, or making any sales of, any of the lots sold by the Central Land Company; and further prayed that the deed from Mrs. Pennybacker to Laidley, and his deeds to the other defendants, be declared void. On the filing of the bill, a temporary injunction was issued as prayed for.

On January 12, 1892, a demurrer by Laidley to this bill, and a motion by him to dissolve the injunction, were both overruled.

Opinion of the Court.

On January 26, 1894, the plaintiff filed an amended bill in this cause, repeating the allegations and prayers of the original bill; and further alleging that, by reason of certain facts fully and specifically set forth, and alleged to have been discovered by the plaintiff since he filed the original bill, the acts of Laidley in procuring the deed to himself from Mrs. Pennybacker were done while he stood in a confidential relation to Huntington, and were fraudulent as against Huntington and the Central Land Company; and also alleging that, if the legal title passed to Laidley by his deed from Mrs. Pennybacker, he and his grantees held the legal title in trust for the plaintiff and the grantees of the Central Land Company; and therefore praying that the defendants might be decreed to convey the lands, so held by them respectively, to Huntington as receiver of the Central Land Company, and to the grantees of that company.

On February 26, 1896, Laidley and the other defendants filed a plea and answer, in which they denied the allegations of the bill; set up by way of estoppel the judgments in the state courts in favor of Laidley and against the Central Land Company, in the action of ejectment, and in the suit in equity, between them; and claimed to be allowed the amounts awarded to Laidley in his actions of ejectment against Remley and others.

On December 26, 1896, the plaintiff was allowed to further amend his bill in particulars which need not be stated; and the defendants filed the same plea and answer to the bill as so amended.

On July 12, 1897, the court, upon a hearing of the parties, adjudged that "said plea of *res adjudicata*" be overruled; and gave the defendants leave to answer the bill; and denied motions of the defendants to dissolve the injunction, and to remove Huntington from the office of receiver.

On July 13, 1897, Laidley filed another plea and answer, setting up, in different form, substantially the same defences as in the former plea and answer. On September 4, 1897, the other defendants filed an answer to that bill; and the plaintiff obtained an order on Laidley, returnable January 10, 1898, to show cause why his new plea and answer should not be stricken

from the files as irregular. On October 4, 1897, the plaintiff filed a general replication to the answer of the other defendants.

On December 17, 1897, Huntington, as plaintiff in the case at bar, filed a petition in the Circuit Court of the United States for a rule against Laidley and against his attorneys, Z. T. Vinson and William R. Thompson, to show cause why they should not be fined and attached for contempt in violating the injunction granted by that court in February, 1891, by undertaking to sell the lots described in Laidley's actions of ejectment against Remley and others. On December 20, 1897, Laidley and Thompson filed answers to this rule, and annexed thereto as exhibits copies of the proceedings in those actions of ejectment.

On December 20, 1897, on motion of the plaintiff, the court extended the time for taking the testimony in the cause until ninety days after the hearing on the motion to strike out Laidley's plea and answer.

On March 3, 1898, the rule for an attachment for contempt was argued. On June 25, 1898, the court entered an order discharging that rule, because, as the order stated, the court found that the circuit court of Cabell county, West Virginia, had taken jurisdiction of the parties and the subject-matter, prior to the institution of this suit, and the cause was still pending in that court, and therefore the Circuit Court of the United States had no jurisdiction to grant the injunction restraining the sale of the property under decrees of the state court.

On the same day, and without any further hearing in the cause, the court, of its own motion, entered a final decree, as follows: "This cause having come on this 25th day of June, 1898, to be considered by this court upon a petition filed by the complainant herein on the 17th day of December, 1897, praying that a rule be issued requiring that John B. Laidley, one of the defendants herein, and his attorneys, Z. T. Vinson and W. R. Thompson, should appear and show cause why they should not be fined and attached for contempt for violating the injunction order heretofore entered in the above entitled cause, and upon the answer and exhibits attached thereto of the said

defendant, John B. Laidley, to said petition, and upon the answers and exhibits attached thereto of his attorneys, Z. T. Vinson and W. R. Thompson, thereto, and upon the bill and the answers to said bill; and the court having considered the matter, and having duly examined the bill and amended bills herein, and the answers of the defendant and the exhibits attached thereto, and the records in the ejectment suits in the circuit court of Cabell county, in which John B. Laidley was plaintiff and the Central Land Company of West Virginia and others were defendants, and the record in the chancery cause in the circuit court of Cabell county, in which the Central Land Company of West Virginia was plaintiff and John B. Laidley and others were defendants, which said records in said state court actions were not disputed or denied by the complainant; and it appearing from such examination to the satisfaction of this court, upon consideration thereof, that this suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of this court, because of the pendency in the state court, prior to the commencement of this suit, of the action of ejectment in which John B. Laidley was plaintiff and the Central Land Company of West Virginia was defendant, which was begun in the circuit court of Cabell county, West Virginia, on the first Monday of April, 1882, and of the other actions in ejectment brought in said state court by the said John B. Laidley as plaintiff in relation to the property in question in this suit, prior to the commencement of this cause, and of the chancery cause in said state court in which the Central Land Company of West Virginia was plaintiff and John B. Laidley and others were defendants, which was brought in said state court prior to the commencement of this cause; and this court being therefore, for the aforesaid reason, of the opinion that it is required to dismiss this suit by the fifth section of the act of Congress, approved March 3, 1875, and entitled 'An act to determine the jurisdiction of Circuit Courts of the United States, and to regulate the removal of causes from state courts, and for other purposes,' it is now therefore, on this court's own motion, adjudged and decreed that this suit and the bill and amended bills therein be, and

they hereby are, dismissed and stricken from the docket of this court, without costs."

On the same day, the following proceedings took place, and were filed in the Circuit Court of the United States, namely: The plaintiff presented a petition for an appeal from that decree to this court, under the act of March 3, 1891, c. 517, § 5, alleging that he was aggrieved by the final decree by which the Circuit Court of the United States, notwithstanding that it had the first actual physical possession of the land involved in this cause, dismissed the suit on the ground that it had no jurisdiction thereof, because of the pendency of the suits in the state court, begun prior to the commencement of this cause. And the District Judge signed an order "that the appeal be allowed as prayed for;" approved an appeal bond; and signed a citation to the appellees, as well as a certificate in these terms: "A final decree having been entered herein on the 25th day of June, 1898, dismissing this suit and the bill and amended bills therein: Now therefore this court, in pursuance of the second paragraph of the fifth section of the act of Congress, approved March 3, 1891, and entitled 'An act to establish Circuit Courts of Appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes,' hereby certifies to the Supreme Court of the United States for decision the question of the jurisdiction alone of this court over this cause, as follows: Is this court without jurisdiction of this cause, because of the pendency in the state court, prior to the commencement of this suit, of the action of ejectment in which John B. Laidley was plaintiff and the Central Land Company of West Virginia was defendant, which was begun in the circuit court of Cabell county, West Virginia, on the first Monday in April, 1882, and of the other actions in ejectment brought prior to this cause in said state court by the said John B. Laidley as plaintiff, in relation to the property in question in this suit, and of the chancery cause in which the Central Land Company of West Virginia was complainant and John B. Laidley and others were defendants, which was brought in said state court prior to the commencement of this cause?"

The appeal in this case is taken under that clause of the act of March 3, 1891, c. 517, § 5, which provides that appeals or writs of error may be taken from the Circuit Court of the United States directly to this court "in any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision." 26 Stat. 827.

The appellees have moved to dismiss the appeal, upon the ground that the decree of dismissal involved the consideration and determination of the legal effect and conclusiveness of the several judgments and decrees of the state courts, and therefore the appeal should have been to the Circuit Court of Appeals, and not to this court; and upon the further ground that the District Judge could not certify a question decided by the Circuit Judge, or allow an appeal from his decree.

In order to maintain the appellate jurisdiction of this court under this clause, the record must distinctly and unequivocally show that the court below sends up for consideration a single and definite question of jurisdiction. This may appear in either of two ways; by the terms of the decree appealed from and of the order allowing the appeal; or by a separate certificate of the court below. *Maynard* v. *Hecht*, 151 U. S. 324; *In re Lehigh Co.*, 156 U. S. 322; *Shields* v. *Coleman*, 157 U. S. 168; *Interior Construction Co.* v. *Gibney*, 160 U. S. 217; *Van Wagenen* v. *Sewall*, 160 U. S. 369; *Chappell* v. *United States*, 160 U. S. 499; *Davis* v. *Geissler*, 162 U. S. 290. In the case at the bar it appears in both ways.

The final decree of the Circuit Court of the United States recited that, at the hearing upon the petition for a rule for an attachment for contempt, the court examined the bill and amended bills and the answers thereto, and the undisputed records of the suits in the state court; and that from such examination it appeared to the satisfaction of the court that this suit did not really and substantially involve a dispute or controversy properly within its jurisdiction, because of the pendency of those suits in the state court, and for that reason the court was of opinion that it was required by section 5 of the act of March 3, 1875, c. 137, to dismiss the suit;

and it was therefore, upon the court's own motion, adjudged and decreed that the suit be dismissed. The act of March 3, 1875, c. 137, § 5, referred to in that decree, provides that if in any suit commenced in a Circuit Court of the United States, it appear to the satisfaction of that court, at any time after the suit is brought, "that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court," that court shall dismiss the suit. 18 Stat. 472. And such dismissal for want of jurisdiction is reviewable by this court under the act of March 3, 1891, c. 517, § 5. *Wetmore* v. *Rymer*, 169 U. S. 115. The final decree, therefore, clearly shows that the question decided below was a specific question of jurisdiction only. This dismissal of the suit for want of jurisdiction was the only ground assigned for the appeal; and the appeal was allowed "as prayed for."

The same question is also distinctly stated in the certificate made and filed by the District Judge on the same day on which the final decree was entered, and on which he allowed the appeal and signed the citation. It does not appear from the record, and is immaterial, whether the final decree was rendered by the Circuit Judge or by the District Judge. The District Judge was a judge of the Circuit Court of the United States, and as such had authority to allow the appeal and to sign the citation, even if the decree was rendered by the Circuit Judge. Rev. Stat. §§ 999, 1012; *Rodd* v. *Heartt*, 17 Wall. 354. We can have no doubt that the District Judge, who as a judge of the Circuit Court lawfully allowed the appeal and signed the citation, was authorized also to certify to this court the question of jurisdiction determined by that decree.

The question of jurisdiction then, appearing by the decree itself and by the order allowing the appeal therefrom, as well as by the distinct and contemporaneous certificate, to have been the only question on which the decree below was based, is rightly before this court for determination.

The condition of the cause, at the time when the Circuit Court of the United States entered a final decree dismissing it for want of jurisdiction, was as follows: An injunction

had been granted upon the filing of the bill. The court had overruled a demurrer to the bill, as well as a plea of all the defendants setting up the judgments in the state courts as *res adjudicata;* and had given leave to the defendants to answer the bill. Thereupon the defendant Laidley filed a plea and answer setting up substantially the same defences as before; and the plaintiff obtained an order to show cause why this plea and answer should not be stricken out as irregular. The other defendants answered the bill, and the plaintiff filed a general replication to their answer. The court extended the time for taking testimony in the cause until ninety days after hearing the motion to strike out Laidley's plea and answer. That motion was never heard; the time allowed for taking testimony had not expired; and the cause was not heard, or ready to be heard, as between the plaintiff and any of the defendants, except upon a rule (which had been obtained by the plaintiff and argued by both parties) for an attachment against Laidley and his attorneys for contempt in violating the injunction previously granted. Yet the court not only discharged the rule for an attachment for contempt, but at the same time, of its own motion, and without any further hearing of the cause, or of any matter therein, entered the final decree dismissing the suit for want of jurisdiction. This action of the court was irregular. The defendant, as the case stood, was not entitled to present any objection to the jurisdiction of the court over the principal cause; and the plaintiff was entitled to be heard upon any such objection taken by the court of its own motion. *Hartog* v. *Memory*, 116 U. S. 588; *Morris* v. *Gilmer*, 129 U. S. 315, 327; *Wetmore* v. *Rymer*, 169 U. S. 115, 122, 123.

Independently of that consideration, the decree dismissing this suit for want of jurisdiction was erroneous. It may be that the order discharging the rule for an attachment for a contempt in violating the injunction by proceedings under orders of the state court was correct. Rev. Stat. § 720; *Diggs* v. *Wolcott*, 4 Cranch, 179; *Riggs* v. *Johnson County*, 6 Wall. 166, 195; *Central Bank* v. *Stevens*, 169 U. S. 432, 460. But it by no means follows that the Circuit Court of the United

States had no jurisdiction to entertain this suit for any purpose.

Before the commencement of the present suit, all the proceedings between Laidley and the Central Land Company in the state court, which affected the whole tract of 240 acres, had been brought to an end — Laidley's action of ejectment against the Central Land Company, by a judgment and a writ of possession in Laidley's favor; and the Central Land Company's bill to restrain Laidley from proceeding with that action, by a decree dismissing the bill. And Laidley's proceedings in ejectment in the state court against Remley and others concerned only the legal title in parts of the tract of 240 acres.

The present suit seeks to charge the whole tract with a trust in favor of the plaintiff as receiver of the Central Land Company. Under the circumstances of this case, the question whether the proceedings in any or all of the suits, at law or in equity, in the state court, afforded a defence — either by way of *res adjudicata*, or because of any control acquired by the state court over the subject-matter — to this bill in the Circuit Court of the United States, was not a question affecting the jurisdiction of that court, but was a question affecting the merits of the cause, and as such to be tried and determined by that court in the exercise of its jurisdiction. The Circuit Court of the United States cannot, by treating a question of merits as a question of jurisdiction, enable this court, upon a direct appeal on the question of jurisdiction only, to decide the question of merits, except in so far as it bears upon the question whether the court below had or had not jurisdiction of the case.

In any aspect of the case, the decree of the Circuit Court of the United States, dismissing the suit for want of jurisdiction, must be reversed, and the cause remanded to that court for further proceedings therein.

The case of *Blythe* v. *Hinckley*, 173 U. S. 501, cited by the appellees, has no tendency to support the opposite conclusion. In that case, this court dismissed the appeal, because the decree below was not founded solely upon a want of jurisdiction in the Circuit Court of the United States, but also upon the

grounds that the plaintiff's remedy was at law and not in equity, and that certain judgments of the state courts could not be reviewed on the reasons put forward. And of the last ground this court, speaking by the Chief Justice, said that it "was not in itself a decision of want of jurisdiction because the Circuit Court was a Federal court, but a decision that the Circuit Court was unable to grant relief because of the judgments rendered by those other courts.' 173 U. S. 507.

Decree reversed, and cause remanded for further proceedings.

MR. JUSTICE BREWER dissenting.

I dissent from the opinion and judgment in this case. In a purely technical sense it may not be open to criticism. But when, as disclosed, it appears that in the state courts by final determinations, beyond any opportunity of review, the legal and equitable title to the tract in controversy has been adjudged to be in Laidley, (even if there be question of the correctness of those decisions,) it seems to me that under the act of March 3, 1875, referred to in the opinion of the majority, the Federal court not only may rightfully but also should hold that whatever may be the state of the pleadings the litigation in that court must stop. Of course, everybody knows that when there has been in separate actions in courts of law and equity final determination as to both the legal and equitable title there is no excuse for further litigation, and I think that we sacrifice substance to form when we hold that the Federal court should not, when these facts are disclosed, act promptly, but must wait until the issues presented by pleadings have been attempted to be supported by testimony and the case is ready for final hearing. *Interest reipublicæ ut sit finis litium.*